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FISCAL YEAR 1991 CUSTOMS SERVICE BUDGET AUTHORIZATION AND CUSTOMS USER FEE

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

FEBRUARY 22, 1990

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CONTENTS

OPENING STATEMENTS

Page

Bentsen, Hon. Lloyd, a U.S. Senator from Texas, chairman, Senate Finance Committee 1
Packwood, Hon. Bob, a U.S. Senator from Oregon 2
Symms, Hon. Steve, a U.S. Senator from Idaho 10

COMMITTEE PRESS RELEASE

Senator Bentsen Announces Hearing on Customs Service Budget Authorization and Customs User Fee 1

ADMINISTRATION WITNESSES

Hallett, Hon. Carol B., Commissioner, U.S. Customs Service, accompanied by Michael Lane, Deputy Commissioner, and Wayne Hamilton, Budget Director 3
Bolton, Joshua B., General Counsel, Office of the U.S. Trade Representative 11

PUBLIC WITNESSES

Handal, Peter V., chairman, Trade Policy Committee, the American Association of Exporters and Importers, New York, NY 14
Norton, Richard E., director of facilitation, the Air Transport Association, Washington, DC 16
Tobias, Robert M., national president, the National Treasury Employees Union, Washington, DC 18
Gordon, James K., director, international relations, the Airport Operators Council International, Washington, DC 20
Shapiro, M. Sigmund, chairman, legislative committee, the National Customs Brokers and Freight Forwarders Association, Baltimore, MD 21
Kumm, Kenneth A., chairman, the Joint Industry Group and Manager, customs and trade affairs, the 3M Co., St. Paul, MN 23

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Bentsen, Hon. Lloyd:
  Opening statement 1
  Prepared statement 29
Bolton, Joshua B.:
  Testimony 11
  Prepared statement 29
  Responses to questions submitted by Senator Riegle 31
Gordon, James K.:
  Testimony 20
  Prepared statement 31
Hallett, Hon. Carol B.:
  Testimony 3
  Prepared statement 34
  Responses to questions submitted by:
    Senator Bentsen 36
    Senator Heinz 42
  Letter to Senator Symms, dated March 16, 1990 43

Page

Handal, Peter V.:
  Testimony 14
  Prepared statement 44
Kumm, Kenneth A.:
  Testimony 23
  Prepared statement 48
Norton, Richard E.:
  Testimony 16
  Prepared statement 51
Packwood, Hon. Bob:
  Opening statement 2
Shapiro, M. Sigmund:
  Testimony 21
  Prepared statement 52
Symms, Hon. Steve:
  Opening statement 10
  Prepared statement 54
Tobias, Robert M.:
  Testimony 18
  Prepared statement with attachments 54

COMMUNICATIONS

American Horse Council, Inc. 67
American Iron and Steel Institute 68
American Petroleum Institute 70
Los Angeles Area Chamber of Commerce 71
Odian, Bedros 72

FISCAL YEAR 1991 CUSTOMS SERVICE BUDGET AUTHORIZATION AND CUSTOMS USER FEE

THURSDAY, FEBRUARY 22, 1990

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:40 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman of the committee) presiding.

Also present: Senators Moynihan, Packwood, and Symms.

[The press release announcing the hearing follows:]

[Press Release No. H-6, Jan. 30, 1990]

SENATOR BENTSEN ANNOUNCES HEARING ON CUSTOMS SERVICE BUDGET AUTHORIZATION AND CUSTOMS USER FEE

WASHINGTON, DC—Senator Lloyd Bentsen (D., Texas), Chairman, announced Tuesday that the Finance Committee will hold a hearing on the budget authorization for the U.S. Customs Service, and will examine the possibility of a 2-year authorization. The Committee will also consider proposed legislation relating to the ad valorem customs merchandise processing fee.

The hearing will be on *Thursday, February 22, 1990 at 10 a.m.* in Room SD-215 of the Dirksen Senate Office Building.

"This year, the Committee will want to explore the idea of establishing a 2-year budget authorization for the Customs Service. Providing authorizations for both fiscal year 1991 and fiscal year 1992 could give the Customs Service better long-term guidance on the Committee's intentions, as well as give the Committee a greater hand in setting the agency's budget priorities," Bentsen said.

Additionally, the Committee will discuss proposals regarding the Customs user fee. Current law imposes an ad valorem fee of 0.17 percent on imported goods, the proceeds of which are used to offset the cost of salaries and expenses of the Customs Service incurred in commercial operations. As now constituted, this fee has been found to violate the General Agreement on Tariffs and Trade.

OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, SENATE FINANCE COMMITTEE

The CHAIRMAN. This hearing will come to order.

Today the hearings are being held on a subject to which the Finance Committee returns every year, the authorization of the U.S. Customs Service. We are delighted to welcome for the first time to this committee Commissioner Hallet.

Madam Commissioner, the relationship between this committee and the Customs Service over the last few years has been a pretty rocky one and a very strained one. Under the last administration, the Commissioner took the attitude of going it alone; he often made major changes without consulting with this committee or discussing them with trade groups that were very dependent on Customs' operations.

That kind of responsiveness or lack of responsiveness to this committee and its jurisdiction is one of the reasons the last year we passed legislation that the next Commissioner be subject to the confirmation process. We thought about doing that with you until we discussed your plans for Customs, and I was delighted to see the very positive attitude that you had taken.

I must say that the early returns on your stewardship at Customs are quite encouraging. The business sector tells me that you have been open to their concerns, communicated with them, and certainly promised to work closely with them in the future. The Finance Committee, of course, expects you to follow up on that very positive beginning. There are many changes to be made.

The recent report issued by Congressman Pickle's oversight committee provides a very scathing indictment of waste, mismanagement, and unaccountability by the Customs Service. From the information I have seen thus far, I think that Congressman Pickle is on target. You have some tough challenges ahead of you, but I know you are ready to take on that task. This committee is certainly more than willing to work with you.

First of all, we need to scrutinize this year's proposed budget to assure that you will have the resources that you need to meet the responsibilities of Customs. The sequester and the pay raise this year are causing Customs to cut back on personnel, by more than 300 people and the budget projects even further cuts.

One thing I would like to consider now is a 2-year authorization for Customs. I want to have your comments concerning that issue. It seems to me that such authorization would give you more stability in Customs, allowing you to do some planning. This committee would like to avoid the sort of "whip-sawing" that we have seen in the past and to lay down a marker for some of our priorities.

I would now like to defer to my colleague, the ranking member, Senator Packwood.

[The prepared statement of Senator Bentsen appears in the appendix.]

OPENING STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM OREGON

Senator Packwood. I will echo what the Chairman said. When I came into the back room the Commissioner was there and she asked about Customs uniformity which is an issue that has plagued the west coast and it is simply an issue where two products, identical for all practical purposes, are coming at different ports, and they get classified differently, and therefore the duty is different.

Clearly, where it came into the port with the higher duty classification, the importer was very upset and they wanted a quick adjudication as to what was the proper duty. You did not want to have a higher duty in Portland, OR than Los Angeles, CA. If you could not get the change, you very quickly had the equivalent of judicial forum shopping where shippers carrying certain products would know they would be classified lower in certain ports, and off they would go to those ports.

The Commissioner has done an excellent job. When she asked had I any complaints about uniformity, I indicated that I had only one in recent trips to Oregon from somebody I was not familiar with. But the normal complaints I had had did not come. Of course, it is standard in politics that if people are happy they say nothing. So as nobody said anything but this one person, I have to assume they are happy and the complaints have quit coming.

Then she indicated that she had made, what, 12,000 decisions in a month on uniformity?

Commissioner HALLETT. Totally.

Senator PACKWOOD. Totally?

Commissioner HALLETT. In 1 year.

Senator PACKWOOD. That is an incredible change and I take my hat off to you and I appreciate it very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Commissioner, it is all yours.

STATEMENT OF HON. CAROL B. HALLETT, COMMISSIONER, U.S. CUSTOMS SERVICE, ACCOMPANIED BY MICHAEL LANE, DEPUTY COMMISSIONER, AND WAYNE HAMILTON, BUDGET DIRECTOR

Commissioner HALLETT. Thank you very much, Mr. Chairman. I would like to first introduce two members of our team who have joined me this morning—our Deputy Commissioner, Michael Lane; our Budget Director, Wayne Hamilton. We are also joined this morning by Josh Bolten of USTR who is here to discuss any GATT issues with respect to user fees.

I am particularly appreciative of the opportunity to come before you this morning to discuss our 1991 budget requests for the Customs Service. The proposal will allow for the current operating levels across the board to continue, and for selected operational enhancements in both commercial operations and enforcement areas. I want to emphasize that the Customs role in drug intradiction will be the top enforcement priority.

Mr. Chairman and Senator Packwood, this morning really is a very sad day for us in the Customs Service because we are mourning the loss of one of our inspectors who was killed in the State of Texas this week, in El Paso. He was the victim of a hit-and-run driver, coming across the border. I bring this up this morning because we really forget and many times overlook what a dangerous job each one of our men and women have, not only as inspectors, but agents, and in so many of the positions within the Customs Service. We take for granted so often that their job will not bring them close to harm's way.

I particularly wanted to bring this to your attention today. Tim McCragan was a fine young man with a wife and two children who has been a victim of a very serious crime. We are going to be working very hard to improve our security and procedures to further minimize the chances for this type of incident.

Mr. Chairman, this being my first time before the committee, I do want to talk briefly about how I view Customs, where I see the organization going and the areas in which I intend to concentrate, particularly early on.

First of all, as I have reviewed the Customs portfolio of activity through materials and meetings and briefings as well as site visits during these past few months, it is apparent to me that the last several years we have seen a Customs Service that has received significant support from the Congress.

This support has translated into much needed strengthening of the Custom's commercial operations as well as our enforcement capabilities. I certainly look forward to a continuation of what has clearly been a very good working relationship between Customs and the Congress.

The strengthening of Custom's commercial operations and enforcement capabilities takes me to the next point—where I see Customs going. The concepts which underpinned Custom's early mission—examining cargo and collecting revenue—served the nation well for many years. And while these concepts are still in place today, the Custom's mission has become increasingly complex. Every hour of every day in over 300 ports and sublocations Customs collects fees, taxes and duties ranging from a simple few dollars to multi-millions.

At the same time we must screen passengers and cargo and conveyances for illegal narcotics. These activities are part of a multidimensional mission which encompasses the enforcement and administration of over 400 laws, ranging from simple detention of merchandise and major seizures of conveyances to complex investigations of huge commercial frauds, and major narcotic smuggling conspiracies.

Built into this multi-faceted mission is an indigenous contradiction; namely the timely facilitation of cargo on the one hand versus insuring compliance with the law on the other. As this contradiction continues to run its course in these changing times, there are going to be many challenges for Customs.

It really seems to me that we can meet these challenges if in the current fiscal year we are prepared to position ourselves properly, in the strategic sense, to allow for sustaining our momentum in commercial operations modernization and narcotics interdiction, and at the same time taking advantage of those enhancements for which Customs has worked so hard.

The enhancements of which I speak are automating the entry processing system, elimination of paper documents, special narcotics enforcement operations, targeting of suspect containers.

These enhancements have been nurtured of necessity. The notion of necessity takes me to a key point—one which encompasses those elements which you want to hear about from me: on what I intend to concentrate in the near term as well as beyond.

First of all, Mr. Chairman, Customs will continue its role as the lead agency in narcotics interdiction by maintaining effective interdiction programs within the scope of its mission, and in coordination with other Federal Agencies. As long as the flow of illegal drugs poisons our neighborhoods, Customs will carry out its mandated interdiction role by making maximum use of enforcement resources and continuously fine tuning our narcotics enforcement operations.

That fine tuning will include a continuation of our efforts to bring the highly successful air and marine interdiction operations to their maximum performance levels, and a further strengthening of our canine and C.E.T. team operations.

The President has put forth his strategy on the war on drugs. The Customs Service is working closely with Dr. Bennett in implementing the strategy, particularly in heavily trafficked areas such as the Southwest.

In addition to our lead role in narcotics interdiction, and on an equal footing, there will be a continued march toward meaningful improvement of Customs cargo facilitation and commercial operations mission.

It has been said that the commercial side of the Customs mission has been short-changed over the last few years. That may or may not have been the case. But I will tell you that as the new Commissioner, short-changing will not be the case on my watch. This organization is going forth in consultation and communication with the trade community and Congress toward a Customs Service which is prepared to meet the challenges of the next decade, and willing to accept constructive ideas and input from those commercial interests who want to contribute.

I simply do not accept the notion that we in the trade community should be paralyzed by gridlock simply because we cannot get past our respective parochial interests. We can get past our individual concerns if we are willing to simply put our heads together in the spirit of cooperation. And I believe we will do just that.

In a commercial environment of just in time inventory concepts, multi-country sourcing of component products, and a host of other fast-moving concepts which will call for more flexibility, we are going to have to be cognizant of each others mandates and constraints. I believe anything short of such mutual respect suggests a short-sightedness which our nation cannot afford and certainly should not tolerate.

I want a partnership with the trade community which yields many benefits to Customs. As far as I am concerned, the trade community has so much to offer in the way of suggestions as they live every day of their lives by the bottom line in the business world. At the same time, Customs must have its say because our role is to enforce and administer the laws of the United States as they appear on the books today and not as we might wish they could be. In this sense if we do not like the laws which exist, Customs and the trade community must work together to make convincing cases to change them where appropriate.

In summary, I have heard your concerns about the need to enhance Custom's commercial operations. I agree with you. And as I have just indicated, I intend to do exactly that.

Mr. Chairman, I want to say in closing that this past year has been a very good year for Customs on many fronts in the sense that significant accomplishments have been realized. I would like to list just a few short examples.

In the commercial area we have increased our use of cargo selectivity which is supported by our automated commercial system; we have set up systems which link Customs field operations with our national computer and with Customs brokers and cargo carriers;

we have successfully implemented a system which allows for binding rulings and uniform classification of merchandise and we have implemented a major passenger processing plan and an interagency border inspection system.

In the enforcement area we have had similar successes. We have, as an example, operation "Winter Night" as a joint Customs/DEA program, utilizing shared intelligence; this has brought about some important drug seizures.

I could go on; this is simply to say that Customs has made great strides this past year. I believe that with your continued assistance we will be able to continue to build upon these accomplishments.

In the interest of time I would like to conclude at this point and ask that my formal remarks be included in the record.

Mr. Chairman, I appreciate the opportunity to appear before you today. I will be happy to answer your questions.

The CHAIRMAN. Commissioner, we will certainly take your full remarks for the record. We are pleased to have your statement.

[The prepared statement of Commission Hallett appears in the appendix.]

The CHAIRMAN. In my earlier comments, I alluded to the question of a 2-year authorization. In the past, we have seen OMB cutting back on the amount of money and cutting back on the number of personnel. Then, we have seen the Congress coming back and intervening by authorizing more money and often adding people, which produced a yo-yo effect in the situation.

What is your opinion regarding to whether or not a 2-year authorization would give you more continuity and stability in your planning?

Commissioner HALLETT. Well I do not think there is any question, Mr. Chairman, but what a 2-year appropriation would be very beneficial to the Customs Service for planning. From the standpoint of working with the committees planning period would be very important.

I would favor such an idea though. I have not discussed it with Mr. Darman. I believe, however, that there is some sympathy from OMB for a 2-year approach and it is something I am hopeful we might be able to work on with not only you and the committee, but with OMB as well.

The CHAIRMAN. It seems to me that you face two different types of cuts. One of them is a hang-over left from sequester; and then the other, an absorption of legislated pay raises, such as those we passed here in the Congress. I question the appropriateness of absorbing both of these two different types of cuts in Customs.

Would you comment on that?

Commissioner HALLETT. Well, Mr. Chairman, we have absorbed. In fact, the absorption due to salary increases, health benefits, has put us basically in the hole by an amount in excess this year of $40 million. When we have to absorb those kinds of changes it obviously requires us to rob Peter to pay Paul.

It is a problem with which we are dealing. We certainly are making every effort to make adjustments to accommodate our needs when appropriate. I think from the standpoint of our ability to continue to do the job we will succeed, and I am certainly very proud of what has been accomplished in this last year. While it was not under my watch, I think that we will see a continuation and an improvement in what we have been able to do in some of these areas—whether it is in our air interdiction, whether it is in our commercial operations or whether it is in overall drug interdiction.

We are going to work very hard to meet those demands in spite of absorption and sequestration.

The CHAIRMAN. I notice the 1991 budget calls for cutting out some 98 positions by contracting out to the private sector, and supposedly saving $800,000. The strategy seems to me a subtrafuge on the part of OMB in trying to take $800,000 out of the budget by that means.

What plans do you have for the Customs Service for contracting out some of these services?

Commissioner HALLETT. Well, Mr. Chairman, a number of activities have been contracted out in the past—such as studies. Sometimes these efforts are more productive. I think the area where we have been most successful in contracting out has been in ACS—our automated commercial system.

We have done a considerable amount of it in the past and would feel that this is an area where we can successfully continue to do the contracting out.

The CHAIRMAN. I hope you are right.

Let me speak on one issue that constituents have raised with me. Since 1977, the Customs Service has applied the same duty for artificial foliage as they have for artificial flowers—9 percent. I understand that with the Harmonized System, they are now assessing quite a different duty—a 17-percent duty.

These importers have heretofore relied on this 12-year ruling and have contracted already for the products to a great degree; now they cannot pass on those additional costs. I understand that Customs is reviewing that kind of issue, and I would really like to see you investigate and correct any problems in that issue. I would appreciate any comments you might have in that regard.

Commissioner HALLETT. I appreciate that, Mr. Chairman. Certainly, I might point out that while the package has not come to me for final review, presently we are indeed collecting duty at the higher rate, based on the harmonized tariff system and that language is, of course, what this is being based on.

We are, however, holding entries open so that if the law is changed, refunds can be made when appropriate. But in the meantime, I am very aware of your concerns and that of many people in the industry. I do not take it lightly and I am hopeful that we will be able to come up with a satisfactory resolution in the short near term.

The CHAIRMAN. I will look forward to that.

One of the things that perplexes me is that I listen to the statement indicating that we will have 175 new inspectors on the border for Customs; then, I believe you are talking overall of a cut of some 300 people.

I am concerned about what is happening on the overall staffing along that border. You mention some cuts by attrition; so, at the end of a year, will we have a net increase of people along that border? I am deeply concerned, of course, about drug intradiction, amongst other things; however, I want to ensure that we have sufficient people that we do not impede commerce at that border.

We have had an enormous increase in trade with Mexico which we want to continue to promote. It is beneficial for us and for Mexico. What happens to the economy on that side very materially affects us. I have heard for years that old Mexican saying: "Poor Mexico, so far from God, so close to the United States." I want to do everything we can to promote goodwill between the two countries.

I recall, though, Bob, one of my Mexican friends, also told me, "The trouble with Mexico is you Texans. You took all that part of Mexico that had the good roads." [Laughter.]

Well, that apart, do we have along that border a net increase in Customs inspectors after the erosion that takes place otherwise, by attrition?

Commissioner HALLETT. Mr. Chairman, I am sorry to tell you that there will not be a net increase. We will be adding 175 inspectors.

The CHAIRMAN. Well, that comes as a great disappointment because the chance has been hailed as 175 more Customs inspectors along that border.

Commissioner HALLETT. Along the border it will be an increase. But there will be a net decrease of, I believe, around 91 positions.

The CHAIRMAN. Where?

Commissioner HALLETT. That will be in various ports.

The CHAIRMAN. All right.

Commissioner HALLETT. It may be at an airport here or——

The CHAIRMAN. But along the border—you stated earlier there wouldn't be, but now you have corrected yourself.

Commissioner HALLETT. No, I didn't.

The CHAIRMAN. No?

Commissioner HALLETT. These 175 positions are designated for the southwest border.

The CHAIRMAN. I know that. I just want to be sure—and I want to understand—is there a net increase, and is it a 175 net increase, along the border?

Commissioner HALLETT. Yes, that is correct.

The CHAIRMAN. Net increase?

Commissioner HALLETT. That is correct.

The CHAIRMAN. After retirement, absorption, and attrition, that is correct?

Commissioner HALLETT. That is correct. That is our plan. There are other areas where we will not have and enjoy that same flexibility. And it may be that there will be inspectors taken from one airport here and another airport there, and maybe an entry port, such as the Port of Long Beach or the Port of New York. I cannot tell you where all of those changes will be made. But there will not be an overall net increase in the 5,000-plus inspectors that we have. There will not be an overall net increase; there will be a net decrease. But the southwest border will receive a net increase.

In fact, Texas will receive 50 additional inspectors as El Paso; 25 in Loredo; and 25 will go into Brownsville.

The CHAIRMAN. Good.

One of the problems is the great increase in drugs coming across that Mexican border. Some of the estimates I have seen are as high as 70 percent of cocaine entering the United States coming through there, and these intradictions are not in grams, but in tons.

Commissioner HALLETT. Yes.

The CHAIRMAN. Twenty tons for one carrier that came across at El Paso and whom they finally caught out in California; and there was another one with 9 tons down in Harlingen. Therefore, it is a major concern to us. And yet in addressing that problem, we want to be sure that commerce is not impeded.

Commissioner HALLETT. I would like to just comment on that because clearly the inspectors that are being added will be carrying out both roles.

The CHAIRMAN. Of course.

Commissioner HALLETT. This will not be just specific to the drug enforcement side of the operation.

The CHAIRMAN. I understand. That is why I am trying to be sure it is certain that they will be able to take care of both.

Commissioner HALLETT. Absolutely.

The CHAIRMAN. All right. Thank you.

I defer to Senator Packwood.

Senator PACKWOOD. Well now I am confused. With all these increases in Texas and the net decreases overall, where are they coming from?

Commissioner HALLETT. Senator Packwood, I honestly cannot tell you yet.

Senator PACKWOOD. It is all right if it is Boise. [Laughter.]

Commissioner HALLETT. When I made the comment earlier that we are robbing Peter to pay Paul, unfortunately that is often times the case. We are obviously trying to meet the greatest demands in specific areas.

And again, I think that to back track just slightly, I might point out that there are other ways in which we are meeting some of these demands. We have established Operation Alliance along the southwest border. We certainly are going to work to run our allocation models for inspection in inspection and control in such a way that we will be able to be as efficient this year as we will be next year. And we are working very hard to come up with innovative ways in which we will be more effective with the numbers that we have to deal with. Because we do, indeed, have a net decrease in FTE positions of 314.

Senator PACKWOOD. I can understand partially and we all generalize from experience. Like, I am running my Senate office with fewer people than I had 10 years ago, but that is because of computers and printers and things that allow us to make our productivity much better. If that is what you are telling me, I can understand it. If there is a net decrease in the physical act of inspecting, I am not sure I understand. Unless, as I read your statement, so much more of this is being done on an automated basis that you can do more with fewer people.

Commissioner HALLETT. You know, that is interesting because that is basically the point I would make. And yet I think that there is a very convincing and interesting study that Treasury has done in which they showed that ACS has actually eliminated the need for 6,500 people. That is very significant.

We have spent——

Senator PACKWOOD. All in Customs.

Commissioner HALLETT. In Customs—in the Customs Service.

Senator PACKWOOD. Is that right.

Commissioner HALLETT. It has taken up the slack.

Senator PACKWOOD. Who did this study?

Commissioner HALLETT. The Treasury Department. I would be happy to supply the committee and you with a copy of that. In addition to that, I think it is important to point out that we have spent $150 million on our ACS system; and, in fact, of that amount of money, we, I think, have gotten much more—maybe as I should say the old slang term—"Bang for the Buck" than anyone ever dreamed would be possible.

This isn't to say that it solves all of our problems. But it certainly is making a significant difference in these times.

Senator PACKWOOD. I would like to see this. I am inclined to believe it. But I would like to see it as good evidence to use as an example of the Government holding the line in terms of personnel that must be done with automation.

Thank you, Mr. Chairman.

[The information referred to above is retained in the committee files.]

The CHAIRMAN. Thank you.

Senator Symms?

OPENING STATEMENT OF HON. STEVE SYMMS, A U.S. SENATOR FROM IDAHO

Senator SYMMS. Thank you, Mr. Chairman.

Welcome to the committee.

Commissioner HALLETT. Thank you, Senator.

Senator SYMMS. I have been concerned, I think as you know, with the petroleum industry's inability to obtain duty drawback when they export drawback eligible product. This came about as a result of Customs Service Directive 88-1. So as a result of that I introduced a bill, S. 1648, which speaks to and would cure, this problem. I intend to pursue the adoption of this legislation at the first opportunity.

I have encouraged the petroleum industry and Customs to pursue a resolution of the issue to enable the customs service to issue the drawback, being claimed only on drawback eligible refined products. The petroleum industry needs to be assured that the procedure is not so complicated as to make compliance either impractical or totally impossible.

I would ask that the rest of my statement on this subject be in the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Symms appears in the appendix.]

Senator SYMMS. But I would like to ask one question on that. Have you received a proposal with respect to CSD 88-1 from the petroleum industry? My understanding of that proposal is that the industry would forego drawback claims for a month to establish a pool of drawback eligible product. This would ensure Customs that any refined product exported during the subsequent month does qualify for the drawback.

Now you may not want to answer this right now. If you do have it, I would love to have the answer on the record. If not, I would hope you could provide for the record what your response will be or has been to the industry.

Commissioner HALLETT. Thank you, Senator Symms.

There have been several meetings on this issue with the industry. We have several submissions from them. I believe we are waiting for one additional submission. But certainly we do intend to meet with them again and we will meet as needed. Once we have that additional submission I believe we will then be in a position to go forward.

I would like to be able to respond to that on the record after we have had that additional submission and would certainly be happy to meet with you on it.

[The information appears in the appendix.]

Senator SYMMS. Okay.

I thank you very much. I appreciate that and I appreciate your concern. I hope we can work it out. It would probably be a reasonable way to do it.

Mr. Bolten, if I could direct one question to you.

The CHAIRMAN. I wonder if we could let Mrs. Hallett go.

Senator SYMMS. Certainly.

The CHAIRMAN. And then we will let Mr. Bolten testify.

Senator SYMMS. Oh, he has not yet testified. I am sorry, Mr. Chairman. I apologize.

The CHAIRMAN. Commissioner, we are very pleased to have you. Thank you. I know your other responsibilities, and we will let you go if you would like.

Commissioner HALLETT. Mr. Chairman, thank you very much. I appreciate so much the opportunity to appear before the committee and to work with all of you.

Thank you.

The CHAIRMAN. Thank you.

We are very pleased to have with us the General Counsel for the Office of the U.S. Trade Representative, Mr. Bolten.

Mrs. Hallett, I have been advised by staff that Senator Heinz has some written questions which we will send to you or provide you; and we would like an answer for the record.

[The questions appear in the appendix.]

Commissioner HALLETT. We will be happy to provide that.

The CHAIRMAN. Thank you.

Commissioner HALLETT. Thank you very much.

The CHAIRMAN. Mr. Bolton, we are very pleased to have you back.

STATEMENT OF JOSHUA B. BOLTEN, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. BOLTEN. Thank you, Mr. Chairman. I appreciate the opportunity to comment briefly on the administration's proposal with respect to Customs users fees. You have prepared testimony from us that goes into detail on this issue. You also have a formal bill submitted by the Treasury Department, so I will just summarize briefly.

The current Customs user fee expires on September 30 of this year. The administration considers it appropriate that importers contribute to the cost of necessary Customs services and therefore proposes that the fee be renewed. We are also proposing a number of modifications to the structure of the fee in order to bring the U.S. into compliance with our GATT obligations.

Two years ago, Mr. Chairman, the GATT adopted a dispute settlement panel report finding our fee GATT inconsistent in some respects—principally that the fee had not been limited in amount to the appropriate costs of the services provided. The fee had been set at a level that offset not only Customs commercial operations but also the cost of some operations not directly related to merchandise processing; and the fee had also offset some costs of processing of imports that were in themselves exempt from the fee.

The administration has sent up a proposal which addresses each of the defects identified by the GATT panel. It is a proposal that is similar in most major respects to one that was included by the Ways and Means Committee in last year's House Budget Reconciliation Bill that was ultimately not adopted. The details of our proposal, Mr. Chairman, are in my prepared testimony and in legislation.

Briefly, the modifications that we are proposing would bring the fee much closer to the cost of the actual services rendered and would not be used to fund processing of imports not subject to the fee.

Mr. Chairman, I will close by emphasizing the importance that we attach to bringing our fee structure into compliance with our GATT obligations. USTR and the administration very much appreciate the efforts that you and Senator Packwood and other members of the committee made last fall in bringing our Superfund law into compliance with our GATT obligations. That move has—and I think the move of amending the Customs user fee in the way the proposal would—pay important dividends in ensuring that our trading partners comply with GATT rulings against them.

I would be pleased to take your questions.

The CHAIRMAN. Regarding the replacement for the merchandise processing fee, the ad valorem approach to it, which I understand is supported in general by the administration, and establishes a minimum and a maximum, but lowers the fees somewhat, overall.

Mr. BOLTEN. That's correct.

The CHAIRMAN. You are telling me that you think that proposal is in compliance with GATT? We have no problems with respect to that? Is that correct?

Mr. BOLTEN. That is correct, Mr. Chairman. We think it would bring us into compliance with the GATT panel report. There are a number of ways of skinning the cat, some look better from the GATT perspective than others, but we think this one does the trick.

The **Chairman**. Well, this plan is very different from the House suggestion last year in reconciliation. Why is this one better than the House version?

Mr. **Bolten**. It is better than the House version in several respects—the principal one being that the House version had no minimum fee and therefore had to have a higher maximum fee. What the proposal that was sent up recently by the Treasury Department does is, bring the level of the possible charge into a smaller range so that the level of the fee more closely approximates the cost of the processing.

The **Chairman**. Thank you.

Senator Packwood?

Senator **Packwood**. Joshua, take off your USTR hat now and pretend just for example you were one of the staff counsel to the Senate Finance Committee and you were asked if a Customs user fee is good trade policy at all. How would you answer?

Mr. **Bolten**. Well, Senator, you are recalling halcyon days and my USTR hat is now surgically attached. [Laughter.]

I may have some difficulty.

From the trade policy perspective, the current fee is on balance a net negative because it has been found inconsistent with our GATT obligations and it is causing us the problems attendant with that.

I think that our proposal brings us at least into the neutral range on a trade policy basis, maybe into the positive. If we have a fee that is both GATT consistent—and we think our proposal is—and that does not in itself pose any barrier to trade—and we think this fee is small enough and simple enough that it does not pose a barrier to trade—then we are in the neutral region from a trade policy perspective.

If in addition the fee helps guarantee that the Customs Service gets the necessary funding to perform its functions efficiently and in a way that really lubricates trade, then from a trade policy standpoint the fee, in fact, may be a net plus.

Senator **Packwood**. Good answer. Thank you.

The **Chairman**. Senator Symms?

Senator **Symms**. Thank you, Mr. Chairman.

Joshua, I have conveyed to Ambassador Hills a concern I have about the problem with respect to the Japanese and wood products. Has there been any progress made on that? Are the Japanese aware from your negotiations of the problems that they may face within the Congress if we cannot come to some accommodation?

Mr. **Bolten**. Senator, I think they are. The administration is well aware of the concerns that you and Senator Packwood, Senator Baucus, the Chairman, a number of members, have expressed about wood products exports to Japan.

Since this issue was identified as one of the Super 301 priorities last May, we have been involved in regular, intensive discussions with the Japanese. I do not want to say that we are over the hump, but we are optimistic that we will be able to get some good results out of those discussions. There is a team, in fact, in Japan right now as we speak, talking with the Japanese about wood products issues as well as a number of others.

Senator **Symms**. If we could go back a moment to Senator Packwood's question about fees. It is my understanding that there has been a fee imposed on the import of silver and gold bullion, which minded in the United States and refined in Canada, and it is a percentage of the value. It has the problem of distorting the market because as you know there is a single world-wide price for gold and silver bullion.

Are we still imposing this distortion today or does your proposal correct it?

Mr. BOLTEN. Senator, if I understand the question, the concern may be the way the current fee is structured. There is a 0.17 percent fee assessed on any imports of bullion into this country without any maximum. In other words, if it is a $100 million shipment—I will not try to do the math—but you could have a rather large fee assessed on what is, in fact, a relatively simple import.

The proposal that came out of Ways and Means would cap that fee, as would the administration's proposal that is before you now. Our proposal would be to cap it around $400. So that if there were an importation of a million dollars in gold bullion you would not be paying thousands of dollars in import processing fees; the maximum you could pay on that transaction is $400. The distortion that I believe you were referring to would be eliminated by both the administration's proposal and the Ways and Means proposal.

Senator SYMMS. Thank you.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Bolten appears in the appendix.]

The CHAIRMAN. Thank you.

Mr. Bolten, Senator Riegle will have a written question for you for the record that we would appreciate having.

[The question appears in the appendix.]

The CHAIRMAN. Thank you. We have no further questions.

Mr. BOLTEN. Thank you, Mr. Chairman.

The CHAIRMAN. Next we have a panel consisting of Mr. Kenneth Kumm, Chairman of the Joint Industry Group; Mr. Robert Tobias, National President of the National Treasury Employees Union; Mr. Sigmund Shapiro, Chairman of the Legislative Committee, The National Customs Brokers and Freight Forwarders Association; Mr. Peter Handal, the Chairman of the Trade Policy Committee for the American Association of Exporters and Importers; Mr. James Gordon, Director of International Relations for the Airport Operators Council International; and Mr. Richard Norton, Director of Facilitation for the Air Transport Association.

Gentlemen, we are pleased to have you with us. Mr. Handal, we will start with you and work our way across the board. I would ask that you limit your comments to 5 minutes, each of you; then, we will take your entire statement for the record. That will give us some time to ask questions.

STATEMENT OF PETER V. HANDAL, CHAIRMAN, TRADE POLICY COMMITTEE, THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, NEW YORK, NY

Mr. HANDAL. Thank you, Mr. Chairman.

My name is Peter Handal. I am President of Victor B. Handal Company which is a manufacturer and importer of children's wearing apparel and accessories. I appear here today as Chairman of the Trade Policy Committee of the American Association of Exporters and Importers.

We are a national organization of over 1200 members engaged in all aspects of international trade. Our members are importers, exporters, shippers, brokers, forwarders and others that interact daily with U.S. Customs, making us, I believe, one of the closest observers of Customs operations.

I would like to add my second to your praise of the Commissioner's openness and her very cooperative attitude since she has taken office.

The purpose of our testimony is to state loudly and clearly that we are opposed to the user fees. We feel that they are bad fiscal policy and bad trade policy for three reasons. First, the user fees are fundamentally not fair in this instance. Second, they are not consistent with our international obligations. And third, they are not cost effective.

First the issue of fairness. To us a user fee is a fee paid for the voluntary use of a good or service designed for individual benefit. An example of a good user fee, one that we would have no objection to, ones that we are paying now, are charges that we pay for personnel overtime, for example, or charges for placing a Customs employee on business premises.

But the user fee in question is little more than double taxation for Government mandated services. It is analogous to charging a taxpayer a fee for filing an income tax return or for paying income taxes. The functions of the Customs Service are required by law and are carried out for the general welfare. It is simply not fair, in our opinion, to make us pay a tax on these taxes.

We agree with the GATT panel report of November 17, 1989 which found that U.S. user fees imposed for the regular importation of merchandise were "simply taxes on imports" and as such were inconsistent with the fundamental principles of GATT.

Our second point is that the user fee is not GATT consistent. Our written testimony goes into this in great detail. Our view is basically that Article VIII, which calls for a reduction of fees and charges, is violated; that the MFN clause—the Most Favored National clause—of GATT is violated because the user fee applies to some countries and not to others; and also that the user fee will result in overcharging on nonexempt imports. If this problem is corrected, then the amount of money collected from the user fee goes down considerably.

But lastly, we interpret the GATT panel ruling as stating that any user fee is an ordinary tax on imports and, therefore, inconsistent with GATT.

Our third point is that the user fee will not raise the net amounts that are expected. That there are secondary effects that must be taken into account. For example, there are transaction costs. Businesses have a cost in paying the user fee. Customs brokers have costs in collecting the users fees. These costs either reduce our profits—in which case we pay less taxes to the Government—or they are passed on—in which case we end up on the margin doing less business, which then reduces the taxes paid to the Government.

The Government itself has costs to collect the user fee. The U.S. Customs Service has a separate office and staff that deals with the user fee and it is probably reasonable to conclude that whatever the cost of the private sector, that the cost of Government is somewhat more for this processing.

More than that, the user fee itself is either absorbed by U.S. business, which reduces our profits and therefore the taxes that we end up paying to the Government or it is passed on to the consumer in higher prices which reduces the amount of imports which in turn reduces the amount of duties and the user fee and the taxes that are collected.

Also we would make the point that if the user fee is ultimately found to be GATT illegal that GATT can then sanction compensation which would lower the exports and the profits of the exporters and the taxes that the exporters would pay, and incidentally increase the trade deficit. And also on the other hand if the user fee is designed so it is acceptable to GATT then we are open to other countries imposing the same tax on us and then the whole processing of this logic goes through—the exports would be lower, the profits would be lower, the taxes would be lower, and so on.

In other words, we think that there are many second effects which will offset the monies initially collected in the user fees by literally hundreds of millions of dollars.

In summary, Mr. Chairman, we feel that the user fee is not fair, that it is not compatible with GATT, that it is not cost effective; and we would basically ask you to pull the plug on the user fee and let it die a peaceful and a well deserved death.

Thank you, Mr. Chairman.

The CHAIRMAN. Other than that you think it is all right?

Mr. HANDAL. Yes, absolutely. [Laughter.]

The CHAIRMAN. All right.

[The prepared statement of Mr. Handal appears in the appendix.]

The CHAIRMAN. All right. I think you made your position quite clear.

Mr. Norton.

STATEMENT OF RICHARD E. NORTON, DIRECTOR OF FACILITATION, THE AIR TRANSPORT ASSOCIATION, WASHINGTON, DC

Mr. NORTON. Thank you very much, Senator Bentsen. My name is Richard Norton and I am director of facilitation for the Air Transport Association. ATA represents most of the major scheduled air carriers in the United States and provides service between the United States and more than 80 other countries.

We appreciate this important opportunity to discuss ATA's views on whether or not Customs can provide adequate staffing at international airports, in terms of both passenger and cargo inspection. After listing to Commissioner Hallett's statements this morning, the industry is not just concerned, we are convinced that the levels specified in the administration's 1991 budget are going to further aggravate serious congestion that we are experiencing at these airports, cause unnecessary disruptions for travelers and make air travel in general less efficient.

Normally when we face these circumstances there are three courses of action that are recommended. One is simply to demand an increase in appropriations; another, to seek an increase in user fees; or third, as Commissioner Hallett put it, trade off, rob Peter to pay Paul—diminish services for the sake of presence or trade off facilitation for enforcement.

ATA is making none of these recommendations. What we are asking is that consideration be given to changing the structure of the fee account, especially on the fee collected from international air passengers, and provide that that money goes directly to services at the airport.

As I said, this situation is getting critical. There has been an over 40-percent increase in international air travel to the United States just since 1986. It is a phenomenal increase and it is all coming through the same facilities that were in existence then. Customs described their innovations and we fully commend them on what they have tried to do: separating flights into high risk/low risk categories; developing profiling techniques to separate good passengers from bad ones; computerizing the admissions process. All of these are notable efforts. But they simply cannot keep up.

This traffic is coming into the major ports of entry. It is starting to come into new ports of entry that are being developed to compensate for this congestion. And now the Department of Transportation has announced a new policy which will enable a virtual multiplication of the routes to the United States and again increase the demand for new facilities, more Customs officers. With a 314 net position decrease in fiscal year 1991 for Customs, they are not going to come out of the land border. We know in the air industry exactly where they are going to come from: they are going to continue to come from the airport staffing levels.

The 1985 COBRA legislation allowed the collection of $5 from each passenger traveling to the United States. The enabling language of that statute specifically provides that Customs should give adequate service to the passengers at these airports at no cost to the airlines or the passengers. Despite this clear language, right now those user fees are solely going to paying for the overtime of Customs officers at the land borders and airports, or to provide for the expenses of stationing officers overseas, such as the Canadian pre-clearance sites.

There remains $35 million in unspent excess in this account that is not utilized per year. While that money sits there, the airline costs go up because passengers simply cannot move through the system. The airlines contribute, or the airline passengers, over 70 percent of the $150 million that is collected, yet we are watching the positions slowly erode at these airports. Again, a net decrease predicted of 314 positions.

We recommend that the committee take action to rectify this inadequacy and direct that the $35 million be spent on positions, or equipment, at the airports which will dig us out of this hole. Again, this would have no effect on appropriations.

Turning to the fees on commercial cargo shipments, we feel very strongly that the charges, particularly on informal packages which currently escape any sort of charges, will have a demonstrably negative effect on trade. A fee is contemplated that we have been told will range anywhere from $13 to $25 to ship a small package. This is in addition to the normal shipping costs. This is going to deter a lot of people from using small package delivery services. Aunt Hilda is simply not going to send Johnny a teddy bear for Christmas if it is going to cost $25 to do so on top of normal charges. That service will not just cease expanding, it will actually decrease if people sense that this charge is exorbitant.

In conclusion, ATA asks that the committee give immediate attention to both of these matters. Our suggested modifications to the user fees are critical to the healthy growth of the air transport industry, yet will not require any increase in appropriations, as I said. Additionally, the changes we have recommended will provide a tangible benefit to the traveling public and serve to encourage growth in international trade and tourism.

Thank you, Senator Bentsen and the committee, for this chance to comment.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Norton appears in the appendix.]

The CHAIRMAN. Mr. Tobias.

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, THE NATIONAL TREASURY EMPLOYEES UNION, WASHINGTON, DC

Mr. TOBIAS. Thank you very much, Mr. Chairman, for the opportunity to once again appear.

I start, Mr. Chairman, with the proposition that the U.S. Customs Service is an Agency in crisis. The 2-year investigation that was recently conducted by the Oversight subcommittee of the House Ways and Means Committee has revealed some serious problems contrary to what you have heard earlier this morning.

For example, the subcommittee has found that most U.S. Customs Service management decisions are made without supporting data or analysis, that the U.S. Customs Service has violated Federal spending laws, that the U.S. Customs Service automated commercial system—which was the focus of one of your questions, Senator Packwood—has very serious flaws. "Because the system was hastily assembled and rushed into service without adequate documentation and testing, the automated commercial system is in constant need of corrective reprogramming. In addition, numerous manual processes continue to be required to augment the system. In many cases manpower and system limitations combine to create service gaps. The subcommittee recommends that Customs completely review the design of the system to avoid potentially catastrophic situations in the future."

The subcommittee also found the U.S. Customs Service accounting controls which were neglected for years are in total disarray; that the U.S. Customs Service cargo examination program is misdirected and inefficient; U.S. Customs Service seized property program loses money and is mismanaged. U.S. Customs Service cannot ensure that it is properly enforcing anti-dumping and countervailing duty orders issued by the Department of Commerce.

These problems that I identify are not new. NTEU and the trade community has identified most of these problems over the past several years. Customs must now address itself to cleaning up its problems.

Mr. Chairman, Congress is considering a 2-year authorization for the U.S. Customs Service. We support this approach under the following circumstances: First, that Congress enact some specific standards of service. We think too long Customs has been adrift. For example, we would propose that air passengers be cleared within 45 minutes of arrival; that 8 percent of the containerized cargo——

The CHAIRMAN. Does that include luggage?

Mr. TOBIAS. Yes, if you can find it.

Eight percent of the containerized cargo occur instead of the current 4 percent; and that no more than 35 percent of the formal entries be bypassed whereas now 50 percent are bypassed.

Second, we suggest that Congress require the preparation of a 5-year plan—how Customs is going to right itself over a specific period of time. Appendix A to my testimony has some specific suggestions in that area.

Third, Congress should seriously consider a 2-year authorization and appropriation so that OMB cannot thwart congressional will.

And I might point out, Mr. Chairman, that right now the Customs Service is 1,100 positions below what was authorized for 1990, not 314. The 314 were calculated after some 800 were already eliminated—unfilled positions. So a new base line was created for 1990 to calculate the 314. We are 1100 positions short from what was authorized for 1990.

If you take a look at Table 3, Mr. Chairman, that is attached to my testimony, you can see from 1972 through 1992 where Customs has allocated its resources between inspectors, import specialists and so forth, and where we are short and why we are short.

We urge, Mr. Chairman, for 1991 a restoration of the 1100 positions and 550 new ones—300 inspectors and 250 for import specialists. We suggest for 1992 an additional 1,000 positions—200 inspectors and 100 investigation patrol officers for the drug war, 50 special agents, and 650 for commercial operations.

Mr. Chairman, we believe that the commercial operation functions needs these additional resources. The anti-dumping and countervailing duties have increasing 562 percent between 1984 and 1989. The number of entries have increased 200 percent since 1984 and nearly doubled in 1989 alone. That is reflected in the chart on Table 7 that I have attached to my testimony.

We think that with that kind of increase it is really necessary that we have people to examine the goods. If you look at that Table 7 you can see that only 50 percent, as I say, of the material is examined; 50 percent is bypassed—some 1.5 million dutiable entries come into the United States are never examined at all by Import Specialists. We think there is a lot of gold in them there hills if that cargo was examined.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Tobias appears in the appendix.]

The CHAIRMAN. Mr. Gordon.

STATEMENT OF JAMES K. GORDON, DIRECTOR, INTERNATIONAL RELATIONS, THE AIRPORT OPERATORS COUNCIL INTERNATIONAL, WASHINGTON, DC

Mr. **Gordon**. Thank you, Mr. Chairman. The Airport Operators Council International is pleased to be able to express its concerns to the committee this morning.

Each year we come before the committee to ask for more resources for staffing and for support for new procedures to relieve the constraints of what is really very insufficient Customs inspection staffing. Now, with 38 million persons entering the United States by air, the lack of Customs inspectors at airports has become critical.

Mr. Chairman, as you know, many American cities are seeking their first international air services and others, including major airports in your home State and that of Mr. Packwood are working very hard to expand their links to the important international markets. This year none of those cities that are seeking newer, expanded air services will be successful, unless the Customs Service takes inspectors away from other cities that also need them.

The Customs Service has about 922 inspector full-time equivalents at airports. And even with the expenditure of tens of millions of dollars in overtime pay, passengers and airlines are still subject to hours of delay and Customs must continue to deny landing rights for new airline services. We judge that, from the overtime and from the delay factors, Customs needs about 450 new inspectors, about half again as many as they have at the airports, to meet the current levels of demand for inspection of passengers and cargo and aircraft.

We would like to address the issue of user fees as well, in particular, the so-called COBRA user fees which will also expire at the end of this current fiscal year. Although we originally opposed these user fees because we doubted that the funds would be used for improved Customs processing, we now favor reauthorization of the eight user fees if there are legislative safeguards imposed.

We believe that the user fees could provide some 300 of the needed new inspection positions. We very much feel that the legislation should allow use of the inspection user fees for salaries, as well as for overtime costs and preclearance costs. We feel that the Customs Service has a poor record of controlling funds and reporting on their use, and we urge you to provide for maintenance of separate and transparent accounts for the user fees and to require strict and complete accounting by the Customs Service both to Congress and to a public advisory body.

We are concerned that as the user fees are applied to inspections, the regular program funds for inspection staffing will be reduced in equal measure, leaving the international transportation system and our trade and commerce in the same difficulties as before. So, we urge you to either earmark or in some other fashion establish a base level of services at existing and new ports of entry, to prevent the reduction of staffing not covered by the user fees.

We are also asking that you help the Customs or call for the Customs to establish a user fee public advisory body to oversee the operations of the Customs Service and their adherence to service standards. We believe that with the user fees, Customs could be more effective at its inspection and enforcement roles.

We very much support the Customs Service efforts to update and automate its passenger and cargo inspections. The airports provide and modernize billions of dollars in inspection facilities used by Customs. We are moving ahead of the government agencies to try to secure the widespread use of machine readable documents and automated passenger information.

We believe that Commissioner Hallett has fostered a new climate of cooperation between Customs and the industry, and has supported her staff in trying to meet the needs of international air transportation. We are very much encouraged by her positive attitude and we look forward to working with her and her staff. We hope you will support her with the resources and the authorizations that she needs.

Thank you, sir.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Gordon appears in the appendix.]

The CHAIRMAN. Mr. Shapiro.

STATEMENT OF M. SIGMUND SHAPIRO, CHAIRMAN, LEGISLATIVE COMMITTEE, THE NATIONAL CUSTOMS BROKERS AND FREIGHT FORWARDERS ASSOCIATION, BALTIMORE, MD

Mr. SHAPIRO. Thank you, Mr. Chairman. Once again, it is a privilege to appear before you, Mr. Chairman. The National Customs Brokers and Freight Forwarders Association has testified before this committee many times.

I am Sigmund Shapiro. I am president of Samuel Shapiro & Co. in Baltimore. I serve as chairman of the association's legislative committee.

Customs brokers and forwarders are at the very hub of our import and export commerce. We see impediments to trade as threats not only to our industry but also to our Nation's well being. And facilitation of the flow of cargo is our salvation. We support the fair and enforcement of all the laws that are on the books, but oppose regulatory barriers that are spawned by ignorance, bureaucracy and mischief.

We, therefore, are highly pleased—in fact, delighted—with Mrs. Hallett and the new look at Customs. The very positive influence that she has exerted is a breath of fresh air in our dealings with the Customs Service. She fully appreciates the hard times that the trading community has experienced and is trying hard to rectify the damage done. We at NCBFAA have worked with Customs for many years. We have ad hoc meetings and we are now receiving requests for our advice on certain technical matters that she is listening to. We know that we will not agree with everything she does, but we do know that we will be able to actively engage in a mutually beneficial dialogue.

As you know, Mr. Chairman, Congress' role is not over but in fact is just beginning, with Customs introducing modernizing legislation that should see the light of day very shortly. We know that you will have to devote your time and energy to these discussions.

We are confident that under your auspices the process can move forward and our views will be considered.

NCBFA believes that the committee should take the opportunity provided by this first 2-year authorization to establish fully adequate levels for commercial operations. We also support increased staffing for the Office of Rules and Regulations, so that the public can have timely access to Customs interpretation and so that we are in a position to comply with the law. We believe strongly that additional resources must be given to the hiring and training of import specialists, again to facilitate compliance and enforcement.

Finally, we ask that you provide the Customs Service the resources necessary to complete its automated commercial systems. We understand that substantial direction must be given to Customs about the application of these resources. ACS will not be perfect, but it is Customs only salvation. NCBFAA asks you to direct that existing subsystems like the automated broker interface be fully developed and perfected to eliminate unnecessary manual operations. This should be done before Customs enters any new and highly conceptual enhancements.

Brokers have invested heavily in ACS and we strongly believe that Customs should feel an obligation to us. Since we helped develop ABI, there ought to be a corresponding return on our investment.

We, too, would like to comment on the user fees, Mr. Chairman. We have worked with the committee since the inception of the fee. It has always vexed the committee and is equally troublesome to us. It is, in fact, a consumer tax and should be called such.

With you, we have tried to repair the international damage done by this blatant violation of the GATT code. We have also attempted to make the fee equitable to all parties, spreading the burden evenly to prevent the user fee from becoming an impediment rather than a mere incidence of commerce. We have helped put patch after patch on this tax and not baling wire, nor patches, nor the blessing of USTR can correct what was wrong in the first place. It is a tax that violates GATT and impedes trade. It should have never been passed.

While this indictment may seem harsh, NCBFAA has not come to this conclusion precipitously. We have taken pains to offer constructive advice as to how to make the fee workable. Yet, every change creates another trap. We believe that every proposal that we have seen, be it ad valorem, modified ad valorem, transaction based, and that includes Customs latest offering, poses serious obstacles to trade. There is a general consensus within the business community that this is the year to repeal the user fee. If we do not, Europe is going to take a counter measure and establish fees just because we have them.

This fee has become such a source of public criticism that there exists a widespread question in the Congress about its value measured against its corresponding political cost. It clearly impedes our negotiating position at the height of the Uruguay round. Our continuing violation of GATT principles undercuts our arguments for fair trade and only provide leverage to those seeking advantage from our embarrassment.

In truth, the user fee is so overladen with problems that like a vessel burdened with too great a load it is ready to slip silently into the sea. If only you will encourage it to do so.

Thank you.

[The prepared statement of Mr. Shapiro appears in the appendix.]

The CHAIRMAN. Mr. Kumm.

STATEMENT OF KENNETH A. KUMM, CHAIRMAN, THE JOINT INDUSTRY GROUP AND MANAGER, CUSTOMS AND TRADE AFFAIRS, THE 3M CO., ST. PAUL, MN

Mr. KUMM. Mr. Chairman, my name is Kenneth Kumm. I am manager of customs and trade affairs of the 3M Co.; and I am chairman of the Joint Industry Group, which is a business coalition of over 100 trade associations, business firms and professional organizations, all of which are involved in international trade, with an interest in Customs and trade facilitation matters.

I thank you for the opportunity to appear before the committee and discuss with you and the problems presented by the maintenance of the Customs user fee by the U.S. Customs Service.

As this committee is aware the Joint Industry Group has been and remains opposed to the concept and the imposition of the Customs user fee intended to cover the cost of basic governmental activities and Custom formalities required by the Customs Service under U.S. trade laws and regulations of the general public good.

The Joint Industry Group strongly believes that the maintenance of the user fee carries with it realistic, domestic and international economic costs to the Government, costs which raise very serious doubts about the usefulness of the Customs user fees as a valid revenue producer.

First, there are costs already incurred by the U.S. trade negotiators in eliminating other countries non-tariff barriers and border fees, and the elimination of which is being placed in real jeopardy by the U.S. and operates as a trade impediment and would operate as a trade impediment to our exports.

Second, there are costs associated with defending the current U.S. fee internationally—including man hours, travel, political costs—thus, a loss of negotiating positions.

Third, there are costs incurred by the U.S. Customs Service over the past 18 months to defend the fee domestically and to attempt to extend and expand the fee beyond its mandated September 30, 1990 sunset. The Customs Service also has expended considerable time and effort to develop numerous proposals. To date none of these proposals have been received favorably either by the business community or by Congress, in part because of the lack of supporting analysis.

Fourth, the user fees are included as a cost of doing business and, therefore, included in deductible expenses, reducing corporate income tax liabilities. Such reductions also translates into reduced government revenues.

Fifth, for the business sector the costs of additional recordkeeping and other administrative requirements must be added to the fee itself. Even entries which are normally duty-free must undergo rigorous Customs appraisals to protect the revenue which is an additional workload for our already overburdened import specialists.

Since the inception of the current fee the Joint Industry Group has challenged the Customs Service to produce evidence that the fees collected are related to "services rendered" and that the cost identified by the Service as commercial services, the costs do not encompass activities which are not related to actual processing of the entries.

To date, the business community has not received any information which would lead us to believe that the Customs Service is willing or—more likely is the case—able to produce detailed data.

It is these costs to which the user fee must, by GATT principles, be related to enable Congress and the business community to react knowledgeably to the latest user fee proposal by the administration.

The Joint Industry Group submits that the user fee burdens the U.S. Government with need to defend GATT inconsistent practices over a critical period in our international trade negotiations—burdens of U.S. businesses and particularly U.S. manufacturers who export, by the way, with unwarranted costs, thereby reducing net revenues; and has not provided a basis for improved services, thereby delivering no benefit to those paying the fee. It is not supported by an analysis to demonstrate its relationship to the costs of processing entries as required by GATT Article VIII.

If maintained, the user fee will ultimately be matched with similar and undoubtedly much higher fees being placed on U.S. exports. By the way, my role at our company, I visit about 52 countries and talk with Customs Services and our own people. Lately I visited with our people in Europe. There is a move over there—they handed me documentation that indicated that there is a real interest on the part of the European community in what we are doing in the Customs user fee category.

For these reasons the Joint Industry Group recommends that the Customs user fee, known as a merchandise processing fee, not be extended beyond October 1, 1990. We strongly urge that the committee repeal the provision in its entirety.

Now this morning we saw or heard about the USTR proposal which would be supposedly GATTable. I believe that anything based strictly on the ad valorem basis is not GATTable. They did not comment that they had received verification from our trading partners that they have asked the question, "is this GATTable," I think it is something that has been developed in the United States and without a lot of input from the business community.

I sit on an industrial advisory committee, a sector advisory committee, which is supposedly to advise the Commerce Department and the USTR on trade matters. I also sit on an IFACT for Customs matters. These matters have not been referred to our advisory committee and I believe it is something that has been developed in-house without proper input from the business community.

Thank you for the opportunity to express these views, Mr. Chairman. I request that our formal statement be placed in your records.

Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Kumm appears in the appendix.]

The CHAIRMAN. Mr. Handal, I believe I heard you commenting about the possibility of user fees on income tax returns. I wish you would not volunteer ideas like that. [Laughter.]

I would like to ask anyone of you who will comment on it to discuss the elimination of the fee, letting it expire. Do you have concern that, if there were no such fee, there would be a reduction in resources and personnel for Customs and that they might be in a more difficult position to argue with OMB regarding the appropriate amount of money for personnel and recourses to Customs? Any one of you who might want to comment on that, please do so.

That situation is what we are facing today with this budget deficit and allocational resources. I would like to have your comments, though.

Mr. SHAPIRO. Mr. Chairman, as I said in my remarks, ACS is the salvation of the Customs Service. Mrs. Hallett indicated that there had been a reduction in personnel and Senator Packwood commented rightfully that automation done properly can reduce overhead. We are the latest to come into the ACS module. I have resisted in my company and we have just joined; and we have reduced our staff without loss of controls. I think that you get more bang for the buck and use your people more creatively by enhancing the ACS module and by retraining Customs people so that they can handle a multiplicity of jobs rather than have highly specialized people.

Mr. TOBIAS. I would like to comment that the Customs user fee, of course, is not being collected by—it is being collected by Customs, but at the present time is not being received by Customs.

Secondly, I think it is important to stress the fact that while we realize that we have the deficit and you have need for revenue that it is important that we realize we are trying to compete internationally in a global marketplace and that what we feel is good in the United States on imports into the United States can very definitely have an adverse effect on our ability to compete internationally, particularly with EC-1992 just around the corner. That is going to be the biggest area of competition that the United States will have. We have to keep that in mind also. There is a balance.

Mr. KUMM. Mr. Chairman, I think the history of the Cobra fee was that it was imposed after we had individual brokers or airlines who paid overtime fees. They were assessed overtime fees when they needed them and when they used them. That was all folded into the Cobra fee.

It would be a very serious problem if that fee were eliminated. If that user fee were eliminated, it would seriously depress the availability of funds to provide the service that on the one hand the user community needs so desperately.

The CHAIRMAN. Thank you.

Mr. Handal?

Mr. HANDAL. Mr. Chairman, just two brief comments. In our opinion there is virtually no connection between the user fee and Customs budget. If you look historically, OMB has been trying to cut, cut, cut at the very time when the user fee has been producing very large revenues. It has been the committee and Congress that has been enforcing the increases in the Customs budget.

The second point I would make is that Customs is a revenue producing agency. At the risk of extending the metaphor with the IRS, the more money that is spent at Customs, in terms of collection and enforcement and so on, the more money that is received.

The CHAIRMAN. Thank you.

Senator Packwood?

Senator PACKWOOD. Mr. Kumm, let me ask you a question. Let's talk about, for the moment, a Customs user fee. There are three questions: Is it fair? Is it legal? Is it wise?

There is an objection to the initial fee that we had because it was ad valorem and the argument of $500,000 of gold and the $50 bicycle and it didn't cost you that much more to handle the gold than the bicycle, but the fee was a lot higher percentage of the total value. So the argument was, that wasn't fair.

So now come USTR and Customs, and say, all right, put a $400 limit, maximum, on it and that will eliminate the problem of the $500,000 in gold and it will make it fairer. Would that be a fair statement?

Mr. KUMM. I would said "fairer," yes.

Senator PACKWOOD. Fairer, yes.

Mr. KUMM. Yes.

Senator PACKWOOD. Now let's go to legal aspects. Let's say it costs Customs $500 million to enforce the commercial Customs laws, off the top of the head. Are you saying that it would not be legally possible to devise a Customs user fee that would meet GATT legality?

Mr. KUMM. No, I do not believe that we have said that. I think that we have said that in the past—and argued this a number of times--that if the fee was based upon the cost of that individual transaction that that would be GATTable.

In other words, if a certain particular--if OMB or GAO could come up with a time study that would say it costs this much to handle this entry, and the cost of that particular entry or number of documents involved in the entry would be $45, why that would be a transaction fee.

Senator PACKWOOD. Of necessity, you would have to average that a bit, wouldn't you?

Mr. KUMM. Yes, correct.

Senator PACKWOOD. You are not talking about every transaction being an ad valorem transaction——

Mr. KUMM. Absolutely.

Senator PACKWOOD [continuing]. At $46.23 or something like that?

Mr. KUMM. I do not think we could argue very well, if you will, against a transaction fee based on the cost of providing that service.

Senator PACKWOOD. Yes, but you don't mean each service? You don't mean each transaction?

Mr. KUMM. Each class of service.

Senator PACKWOOD. Okay, that's fair. And then we would get into an argument about classification.

Mr. KUMM. But there have been proposals to that extent.

Senator PACKWOOD. All right.

Let me ask you this: Because the Chairman makes a very good point and I am not sure, Mr. Handal, your point is right. I understand that OMB has been cutting back and they have been also advocating the user fee. The Chairman is right, this is going to happen in lots of areas as we start to move from general fund revenues to trying to find other ways to fund things; and things that have been funded out of general funds before, general taxes, are going to be funded out of user fees.

So I do not think you can use the argument, that it was not done before and OMB is now trying to do it, because I do not think the argument will work. I think if we do not have the user fee Customs is not going to get as much money as it would otherwise get.

We can argue whether they spend it wisely or not. I am intrigued with what Mr. Shapiro said about the computerization because I found the same thing in Portland. When it first came in the brokers didn't like it. And there were great complaints. I doubt for those who are on it you could get them to go back now to the other system.

So I want to ask this last question. Assuming that we can come up with something that is fair, and something that is GATT legal and reasonably related to the costs of the transactions, even though you classify transactions, would it then be wise to put it into effect, or would you rather run the risk of no user fee at all, probably a reduction in the budget of Customs, and whatever result that might be in terms of commercial transactions or delays or ineptness?

Mr. KUMM. Well I think that we have gone on record as saying that for the amount of money that is collected and the fact that the budget for Customs has always been considered separate from any fees collected, they have not been dedicated to the Customs Service, that it is a difficult question to answer.

The fact that there is a need for the Customs Service. There is a need to provide for trade facilitation, both exports and imports—Customs provides service for exports as well as imports—we are not talking about funding the National Park Service; we are talking about funding a regulatory body that is required to service the trade facilitation and to protect the borders, to collect duties that are designated by Congress.

As a result it is something different than other services provided by the Government.

Senator PACKWOOD. I think you missed my question. If without the user fee their budget was to go down, which would you prefer?

Mr. KUMM. Well, of course, we need a properly funded Customs Service that provides adequate Import Specialists, rulings, regulations, expeditious service for border crossings and so forth, obviously. That is almost an impossible question to answer, obviously.

Senator PACKWOOD. Well that is why I asked it. I don't think the likelihood or the outcome is impossible. I think without the user fee their budget will go down. Which would you prefer?

Mr. KUMM. A properly funded Customs Service out of the general fund.

Senator PACKWOOD. You may get an inadequately funded one out of the general fund, but then do not come back and complain about their lack of service or response time.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. No thank you, Mr. Chairman.

The CHAIRMAN. All right. Gentlemen, thank you very much. We appreciated your statements. They have been helpful.

[Whereupon, the hearing was adjourned at 11:05 a.m.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF HON. LLOYD BENTSEN

Today's hearing is on a subject the Finance Committee returns to every year, authorization of the budget for the U.S. Customs Service. This year we are welcoming before the Committee for the first time Commissioner Carol Hallett.

Madam Commissioner, the relationship between this Committee and the Customs Service has been a rocky one in recent years. Under the last Administration, Customs' attitude was to go it alone. The atmosphere of cooperation and consultation necessary to a healthy working relationship between the Committee and the agency has not been there. At the same time, Customs undertook a number of changes in its practices and policies without even informing the Committee or the international trade community. This lack of responsiveness to the Committee's concerns led to the requirement we passed last year that the Commissioner will from now on be subject to Senate confirmation.

You have the opportunity to forge a new relationship. And I must say that the early returns on your stewardship of Customs have been positive. The business sector tells me that you have been open with them and that you have promised to work closely with them in the future.

The Finance Committee will be expecting you to follow up on this positive beginning. There are a lot of changes to be made. The recent report issued by Congressman Pickle's Oversight Subcommittee provides a pretty scathing indictment of waste, mismanagement and unaccountability in the Customs Service. From the information available to me, I think the report is right on target.

You have some tough challenges ahead of you. But if you are willing to roll up your sleeves and get on with the task, the Committee is more than willing to work with you.

First of all, we need to scrutinize this year's budget proposal to make sure you will have the resources you need to meet all of Customs' responsibilities. The sequester and pay raise are causing Customs to cut back on personnel this year, and the budget projects further cuts. In addition, the Committee will want to consider whether to report a two-year authorization for Customs. Doing so could help you plan for the future, as well as lay down a marker regarding the Committee's priorities.

PREPARED STATEMENT OF JOSHUA BOLTEN

Mr. Chairman, Members of the Subcommittee, I very much appreciate this opportunity to testify today on the Administration's proposal for new legislation regarding a customs user fee on imports of goods into the United States. The merchandise processing fee established in the Omnibus Budget Reconciliation Act of 1986 expires on September 30, 1990, and new legislation is necessary to continue compensating Customs activities in this fashion. With this proposal, the Administration also wishes to bring U.S. application of our customs fee into conformity with our obligations under the General Agreement on Tariffs and Trade (GATT).

The Administration proposes, Mr. Chairman, that our authority to apply a customs user charge to imports be renewed. We consider it appropriate that importers contribute to the cost of necessary customs services. At the same time, we want a customs fee that does not unduly burden importers, either financially or in terms of its administration. We want a fee structure that is equitable in application, predictable, and sufficiently simple to administer that the fee does not become, in itself, a barrier to trade.

Although the current fee has worked well to meet these objectives while providing funds for the U.S. Customs Service, its current structure and scope have been found inconsistent with U.S. obligations under the GATT. It is important that any renewal of U.S. authority to assess customs user fees be accomplished in a manner that addresses these established GATT inconsistencies.

If we want other nations to live by GATT rules and comply with GATT rulings against them, we must be equally prepared to make the appropriate changes in our own actions and policies when we lose. If we cannot bring the fee into compliance with our GATT obligations, we will also be increasingly vulnerable to requests by affected GATT contracting parties for compensatory tariff reductions. We may also have to sustain retaliatory tariff increases in other markets to compensate GATT contracting parties for the effects of the import charge.

Before discussing new legislation, Mr. Chairman, I would like to describe briefly the current merchandise processing fee and the GATT panel decision that declared it GATT-inconsistent.

The current fee, established in the Omnibus Budget Reconciliation Act of 1986, provided for an import surcharge of .22 percent on the value of all imported merchandise with the exception of imports from CBI countries, insular possessions, least developed countries, and imports classified under Schedule 8 of the TSUS. (The 1988 Trade Act eliminated the exception for LDCs.) The rate was reduced to .17 percent ad valorem in 1988 and 1989, and is currently applied at that level. The charge is being phased out on imports from Canada under the provisions of the U.S.-Canada Free Trade Agreement.

Enacted over three years ago, the fee was promptly challenged by the European Community and Canada as a violation of our GATT obligations. In late 1987, the GATT dispute settlement panel established to review the complaint issued its findings and recommendations. While The GATT panel recognized that the application of a customs user fee is not, in principle, inconsistent with the GATT, and that the U.S. fee did not constitute a direct barrier to trade, other aspects of the U.S. fee were found to be inconsistent with the provisions of Article VIII of the GATT, which governs customs charges, as follows:

—First, the open-ended ad valorem nature of the U.S. fee didn't meet the test in Article VIII that such charges, if not import duties or domestic taxes, must be "limited in amount to the approximate cost of services." For example, without minimum or maximum fee levels, imports of very high and very low value items, which might not differ substantially in cost of import processing, would pay unduly different import fees.

—Second, the fee has been set at a level that offsets the cost of customs operations not directly related to merchandise import processing and the cost of the processing of imports excluded from the fee. In addition, in some years, revenues collected have exceeded the total cost of commercial customs services. In the panel's view, such over-collections transformed the customs fee, in effect, into a non-tariff border charge for fiscal purposes.

The panel recommended that the U.S. bring the customs user fee into conformity with Article VIII, and its findings and recommendations were adopted by the GATT Contracting Parties in February 1988. Since that time, the Administration has worked with interested private sector representatives and with the Congress to devise alternatives to the current customs user fee that would address the elements that do not meet GATT norms. Last year, the House Ways and Means Committee approved, and the full House passed as part of its Budget Reconciliation bill, a proposal to amend the current fee. This provision was not included in the final bill.

The Administration believes that the legislation we are proposing addresses the issues raised in the GATT panel report, would implement its recommendations, and would be consistent with our GATT obligations. This legislative proposal also meets the need of the U.S. Government for a customs user fee that can be fairly applied, is simple to administer, and provides sufficient revenues to fund customs costs associated with import processing.

This bill would modify the current import processing fee as follows:

—It would eliminate the open-ended ad valorem structure, substituting a fee schedule that includes a minimum fee of $20 and a maximum fee of $400 for formal import entries.

—The ad valorem charge would be reduced to .15 percent, subject to the minimum and maximum charges.

—All informal entries, the least time-consuming and costly of entries processed by Customs, would pay only $11 each, no matter what their value.

—Manual entries of all types would be charged $3 more than automated ones, to account for the cost of extra processing.

—The proposal excludes from the scope of funding from the fee those operations identified by the GATT panel as inappropriate under GATT rules, and limits the use of fee revenues to the processing of imports covered by the fee. General revenues will fund customs operations for the excluded imports.

—Thus, the application of the fee to Canadian trade will continue to be phased out, and the USTR may negotiate similar treatment for Israel, but in neither case can customs user fees be charged to offset the costs.

These alterations in the structure and scope of the current fee address the criticisms of the GATT panel of the current legislation. Specifically:

—The imposition of a maximum fee and the application of a flat fee for informal entries eliminates the excess collections on high-value entries associated with the current across-the-board ad valorem fee.

—On the other hand, the imposition of a minimum fee and a flat-fee surcharge to account for the additional effort required for manual entries recognizes that there are costs associated with all import processing and avoids subsidization of low-value entries.

—The use of import processing fee funds has been restricted to exclude those operations identified by the GATT panel as inappropriately covered by such revenues, and the processing of imports from excluded supplier countries will not be subsidized by the revenues collected from other imports.

In conclusion, Mr. Chairman, the Administration wishes to see the customs user fee program continued. We continue to believe that the levying of such a charge is the best way to support Customs services in this period of budget stringency. The GATT accepts this concept fully, and requires only that we bring the collections and structure of the customs user fee into conformity with GATT provisions.

In this respect, we think that the new legislation proposed squarely addresses the problems identified by the GATT panel. With the changes described above, the U.S. customs user fee will be "approximately equivalent to the cost of services rendered," as required by the GATT, and will not be used to fund imports that are not subject to the fee.

We will be interested in hearing the views of members of the Committee and the customs community. We are committed to working with all interested parties in continuing the customs user fee on a GATT-consistent basis.

RESPONSES TO QUESTIONS FROM SENATOR RIEGLE

Question. Autos shipped from Canada and Mexico enter the U.S. by means of truck (seven vehicles per truck) or rail (11-13 per rail car). Vehicle shipments from Europe, Asia and other non-continguous countries enter the U.S. via ocean vessels. Approximately 700 vehicles are unloaded from each vessel.

Under the Administration's proposal, the 700 vehicles unloaded from an ocean vessel would constitute one customs entry and would qualify for the proposed user fee cap. By contrast, individual truck and rail car shipments would not qualify for the cap and would be assessed the full 0.7% user fee. As a result, a vehicle shipped by ocean would be assessed an average user fee of 57 cents, whereas a vehicle shipped by truck or rail would be assessed an average fee of over $18.

Is there a significant difference in the cost of processing such entries that would justify this disparity in user fee assessments?

Answer. Section 111 of H.R. 1594 contains a provision which permits automobile importers (monthly entry filers) to aggregate the value of imports for an entire day from the same exporter to the same importer through the same port. This will place domestic auto producers on a more equitable footing with their foreign competitors.

PREPARED STATEMENT OF JAMES K. GORDON

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to present to you the concerns of the Airport Operators Council International and the cities and communities we represent.

The Airport Operators Council International represents the local, regional or state authorities that own and operate the U.S. airports serving virtually all U.S. scheduled international air passenger and cargo traffic. AOCI's Member airports and their communities make billions of dollars in capital investments each year to expand the capacity of our nation's airports, to reduce delays and increase access to the air transportation system, to maintain and promote the growth of healthy local economies and a stronger national economy.

For U.S. airports, customs service is both a capacity issue and an issue affecting the quality of service that airports provide their communities and the many foreign travelers to the U.S. Customs' responsibilities are fixed by law; their resources are limited by the budget. Each year we testify before the Congress seeking your help in getting adequate staffing to inspect the passengers, cargo and mail that flow as a result of our nation's economic and business activity. We ask your support for the Customs Service to be able to operate efficiently and effectively, to protect our nation against contraband and to collect duties, without interfering in our citizens' ability to earn their livelihood. We seek adequate and efficient customs services that will not discourage trade and tourism, applied equally across the United States so that no state or community must suffer unequal protection or gain preference from government regulation of commerce.

This year we come before you with a greater sense of urgency. Our testimony in recent years may have seemed to you a litany of complaint and demands for more customs staffing and greater spending from increasingly scarce Federal revenues. Now, the effects of Federal budget stringency have slowly begun to strangle our nation's trade and tourism. Now, the situation is critical, Mr. Chairman. Many American cities are seeking their first new international airline service, and other cities that already have international service are seeking expansion of their international access. But this year, none of those cities will be successful, unless the U.S. Customs Service takes away inspection staffing from another city that needs the customs staffing for its existing international trade and tourism.

This is dismaying because of the importance tourism and trade have assumed for the U.S. economy. The United States finally has achieved a favorable balance of tourism expenditures, and the trend is projected to continue. Foreign citizens comprise a growing majority of passengers in U.S. international air traffic, and that air traffic is increasing rapidly.

Mr. Chairman, we ask the Committee's decisive action to meet the growing needs of the U.S. international air transportation system.

We ask you for:

- Authorization for a massive increase in Customs Service staffing for inspection of air passengers and cargo;
- Legislation to reauthorize the customs user fees at current levels, for the inspection of passengers, cargo and conveyances, and to insure that those fees are applied to inspection services to benefit those who pay the fees, as has been the experience with the successful immigration user fee law;
- A mandate for the U.S. Customs Service to provide inspection services where and when the economic marketplace and the international transport system determine the need;
- A requirement that all Federal inspection services operating together meet the recognized international standards for processing service.

THE NEED FOR IMPROVEMENT

Your colleagues on the House of Representatives' Ways and Means Oversight Subcommittee earlier this month released a report confirming the recent history of serious problems with the U.S. Customs Service. Among these problems are a poor Customs Service relationship with the trade community, expansion of drug enforcement at the expense of commercial functions, and inefficiency in processing air passengers.

Despite the interest and concern this Committee and others have shown, the Administration and the leadership of the Customs Service were very slow to address the problems. Cities, airlines and the international trade community have continued to experience more serious and more frequent problems, but negative policies and attitudes in both the Customs Service and the Treasury Department changed slowly. For example, Treasury and Customs have never provided detailed information regarding the basic staffing and budget issues affecting Customs to the Treasury Department's Public Advisory Committee on the Commercial Operations of the Customs Service, in a year of meetings.

AIRPORT CAPACITY AND INTERNATIONAL AIR SERVICES

The adequacy and efficiency of the Customs Service plays an important role in making the best possible use of America's heavily burdened air transport infrastructure. The capacity of the U.S. air transport system is of great concern to America's international trade and tourism, as well as to domestic business and leisure travelers. Insufficient capacity results in delays that each year cost the business sector billions of dollars in lost time and missed opportunity, as well in direct costs. America's airports need over fifty billion dollars in new capital investment over the next five years, just to catch up with traffic demand, and nearly two billion dollars of that is for international arrival terminals at fifteen airports. We need to minimize the need to build expensive new facilities, and therefore it is vital that the

Federal inspection services process arriving international passengers as efficiently as possible through the existing international arrival facilities.

Another area where inadequate Customs staffing imposes constraints is in the development of new international airline routes and services. City, state and Federal agencies and businesses expend great efforts to promote U.S. exports and develop foreign tourism to the U.S., and new and expanded international air services are essential to increased trade and tourism. The Secretary of Transportation has responded favorably to public pressure for new routes and rights for international airline service, and the State Department has succeeded in negotiating agreements that allow new services, but the Customs Service, unable to provide inspection staff to clear the new services, has been forced to deny a number of airline requests for landing rights. It is unacceptable for a U.S. government agency to be put in the position of having to curtail this country's international trade and tourism.

STAFFING

The Administration has failed to make any serious effort to address the gross insufficiency of Customs Service staffing. To underscore the problem, total Customs inspection and control staffing in 1989 was increased by 250, or about five percent of the Customs Service's 5,400 inspectors, while international air traffic increased by about 15 percent.

The system by which the Customs Service allocates staff to provide inspection services has broken down under the pressure of resource scarcity, despite Customs officials' best efforts to allocate staff to meet the nation's needs. Customs directors in the field have no staff to handle increased traffic, and must deny airlines' landing rights requests for new services. In 1988, Customs Service directors in the field turned down every single request for landing rights for international services filed by one of the largest U.S. airlines. Mexicana Airlines was recently denied landing rights for new services from Mexico to Los Angeles and San Jose, California, and Customs recently denied Delta Airlines landing rights for a new service from Cincinnati to Paris. Such cases routinely must be appealed to the Commissioner of Customs, and it is routine now for airports and airlines to have to appeal to their Senators and Congressmen for help, and if solutions are found, they involve taking staff away from ports and airports that have themselves fought to get more staffing to serve traffic demand.

Mr. Chairman, our system is "broke" when it requires the attention of the Commissioner of Customs and our legislators to deal with the assignment of a few Customs Service inspectors.

Only about 900 customs inspectors are actually devoted to air passenger processing. Based on the widespread delays in processing passengers at airports, the universal shortage of staffing at airports and the extensive use of overtime pay, we estimate that the Customs Service needs about 450 more full-time inspectors at airports, to meet the current levels of demand. We ask you to authorize the Customs Service to expand its staffing immediately.

As we noted, processing delays are common, and growing worse. The U.S. Travel and Tourism Administration sponsors an in-flight survey of foreign visitors after they depart the United States. We understand that nearly all of the written comments added in the optional space on the survey form are negative comments regarding the Federal inspection to which the travelers were subjected upon arrival. It is shameful that the lasting impression foreigners gain of the U.S. is an unfavorable one. The situation will become more acute still during the peak travel season this Summer. U.S. airports will be jammed with arriving international passengers, processing delays will be severe because of the scarcity of Customs Service inspectors, and the nascent U.S. tourism surplus may be stifled by the negative experiences we're going to give our foreign visitors.

USER FEES

Mr. Chairman, the inspections user fees on international air and sea passengers and conveyances will expire at the end of the current fiscal year. Although we originally opposed these user fees because we doubted that the funds would be used for improved customs processing, we now favor reauthorization of the eight user fees created by the Consolidated Omnibus Budget Reconciliation Act of 1985, if the following legislative changes are also made, to provide more efficient and effective

Customs Service. We have prepared draft language on the user fee reauthorization and stand ready to work with you and any Senator who may be interested.

- We recommend that the legislation allow use of inspection user fees for salaries of Customs Service personnel to provide inspection services to passengers, cargo and mail, and conveyances that generate the fees. We believe the legislation should continue to allow the use of inspection user fees for overtime costs of customs inspection, and the unreimbursed costs of assigning Customs personnel abroad for preclearance, with the remainder applied to new or increased inspection staffing.
- The legislation should allow use of the inspection user fees for the procurement of equipment, and research and development of new equipment and procedures, that will be directly applicable to improvement of the speed and efficiency of customs inspections.
- The Customs Service has a poor record of controlling funds and reporting on their use, so we urge that you provide for maintenance of separate and transparent accounts for the inspection user fees, and require strict and complete accounting by the Customs Service to Congress and to a public advisory body, on the collection and use of Inspection User Fees.
- We are concerned that as the inspection user fees are applied to inspections, the regular program funds for inspection staffing will be reduced in equal measure, leaving our international transportation system faced with the same shortage of Customs inspectors that we presently face. We urge you to earmark funds authorized to Customs for inspections, to establish a base level of services at existing or new ports of entry, to prevent the reduction of staffing not covered by user fees.
- Similarly, we are concerned that expenditure of the user fee revenues, collected for a specific purpose, might be reduced or delayed to compensate for the Federal budget deficit. We therefore consider it most important for the inspection user fee revenues not to be subject to sequestration, and to be applied strictly to the inspection purposes for which they are collected.
- We also recommend the creation of a public advisory committee to provide public support and advice to the Commissioner of Customs on the application of the user fees and other Customs Service resources, the performance of inspection functions, and the adherence to service standards for Federal inspections.

CONCLUSION

AOCI believes that increased Customs Service inspection staffing can make an important contribution to the capacity of the U.S. air transport system, and thus to the efficiency of our economy. Increased staffing also will add to the Customs Service's ability to protect our nation from illegal drugs.

Mr. Chairman, with the appointment of the new Commissioner of Customs, we have seen a number of active efforts to address the Customs Service's weaknesses and the problems suffered by our international transportation and trade. Besides implementation of automated information systems and selective inspections, the Customs Service is considering such useful procedures as customs preclearance of passengers abroad. We are very encouraged by Commissioner Hallet's positive attitude, and we look forward to working with her and her staff. We hope you will support these constructive efforts by reauthorizing the inspection user fees, with appropriate safeguards, and by authorizing the necessary resources for the Customs Service's regular program budget.

Thank you.

PREPARED STATEMENT OF CAROL B. HALLETT

Mr. Chairman, I am pleased to come before you today to discuss the fiscal year 1991 budget request for the Customs Service. This proposal will allow for maintaining current operating levels across the board, and selected operational enhancements in both the commercial operations and enforcement arenas. I want to emphasize that Customs role in drug interdiction will be the top *enforcement* priority.

Mr. Chairman, this being my first time before this committee, I would like to talk briefly about how I view Customs, where I see the organization going and those areas in which I intend to concentrate, particularly early on.

First of all, how I view Customs at this point, given my brief tenure: as I have reviewed customs portfolio of activity through materials, meetings, briefings and site visits these last few months, it is apparent to me that in the last several years, Customs has received significant support from the Congress which has translated into much needed strengthening of Customs commercial operations and enforcement capabilities. I look forward to a continuation of what has clearly been a good working relationship between Customs and Congress.

The strengthening of Customs commercial operations and enforcement capabilities takes me to my next point—where I see Customs going: the concepts which underpinned Customs early mission—examining cargo and collecting revenue—served the nation well for many years. While these concepts are still in place today, the Customs mission has become increasingly complex.

Every hour of every day, in over 300 ports and sub-locations, Customs collects fees, taxes and duties ranging from a simple few dollars to multi-millions. At the same time, we must screen passengers, cargo and conveyances for illegal narcotics. These activities are part of a multi-dimensional mission, which encompasses the enforcement and administration of over 400 laws, ranging from simple detentions of merchandise and for seizures of conveyances, to complex investigations of huge commercial frauds and for narcotics smuggling conspiracies.

Built into this multi-faceted mission is an indigenous contradiction—namely the timely facilitation of cargo on the one hand versus ensuring compliance with the law on the other. As this contradiction continues to run its course in these changing times, there will be great challenges for Customs.

It seems to me that we can meet these challenges if, in this current fiscal year, we are prepared to position ourselves properly—in the strategic sense—to allow for sustaining our momentum in commercial operations, modernization and narcotics interdiction, taking advantage of those enhancements for which Customs has worked so hard.

The enhancements I speak of here—automating the entry processing system, elimination of paper documents, special narcotics enforcement operations, targeting of suspect containers and others, were born of opportunities—but they have been nurtured of necessity. This notion of necessity takes me to my final point—one which encompasses those elements which you want to hear about from me. On what do I intend to concentrate in the near term and beyond.

First of all, Mr. Chairman, Customs will continue in its role as the lead agency in narcotics interdiction by maintaining effective interdiction programs within the scope of its mission and in coordination with other Federal agencies. As long as the flow of illegal drugs poisons our neighborhoods, Customs will carry out its mandated interdiction role by making maximum use of enforcement resources, and continuously fine-tuning narcotics enforcement operations.

The fine tuning will include a continuation of our efforts to bring our highly successful air and marine interdiction operations to their optimum performance levels, and a further strengthening of our canine and CET team operations.

For the record, Mr. Chairman, in 1989, Customs CET teams accounted for 1,075 narcotics seizures totaling 94,400 pounds; seizures where canine teams participated totaled 2,400, netting 117,900 pounds of illegal drugs.

The President has put forth his strategy on the war on drugs. The Customs Service is working closely with Dr. Bennett in implementing that strategy, particularly in heavily trafficked areas such as the Southwest.

In concert with its drug interdiction mission, Customs will continue its active efforts in money laundering investigations, targeting those individuals and institutions responsible for the movement of illegally obtained drug monies. "dirty money" is the lifeblood of narcotics trafficking; as such, the time has come to shut off the flow and we will move toward that end with the Treasury Department and other Federal agencies.

In addition to our lead role in narcotics interdiction, and on a co-equal footing, *there will be* a continued march toward meaningful improvement of Customs cargo facilitation and commercial operations mission performance. It has been said that the commercial side of the Customs mission has been short-changed over the last few years—that may or may not have been the case. However, I will tell you that as the new Commissioner, *it will not* be the case on my watch.

This organization is going forth, in consultation and communication with the trade community and the Congress, toward a Customs Service which is prepared to meet the challenges of the next decade, and willing to accept constructive ideas and input from those commercial interests who want to contribute.

I do not accept the notion that we and the trade community should be paralyzed by gridlock, simply because we cannot get past respective parochial interests. We can get past our individual concerns if we are willing to simply put our heads together in the spirit of cooperation—and we will do just that.

In a commercial environment of just-in-time inventory concepts, multi-country sourcing of component products and a host of other fast-moving concepts which call for flexibility, we must be cognizant of each other's mandates and constraints. anything short of such mutual respect suggests a shortsightedness which our nation cannot afford and should not tolerate.

I want a partnership with the trade community which yields benefits to customs. As far as I'm concerned, the trade community has so much to offer in the way of suggestions, as they live everyday of their lives by the bottom line in the business world.

At the same time however, customs must have its say too because our role is to enforce and administer the laws of the United States as they appear on the books *today*—not as we might wish they could be. In this sense, if we do not like the laws which exist, Customs and the trade can work with Congress to make convincing cases to change them, when appropriate.

In short summary, I have heard your concerns about the need to enhance Customs commercial operations; I agree with you, and intend to do just that.

Mr. Chairman, in the interest of allowing more time for members' questions, I will refer you to my formal, more detailed written statement for further details on customs budget proposal—I would appreciate having that statement included in the record.

Mr. Chairman, in closing, I want to say that this last year has been a good year for customs on many fronts in the sense that significant accomplishments have been realized. for example, in the commercial area, we have increased our use of cargo selectivity, which is supported by our automated commercial system; we have set up systems which link customs field operations with our national computer and with customs brokers and cargo carriers; we have successfully implemented a system which allows for binding rulings and uniform classifications of merchandise and we have implemented a major passenger processing plan and an interagency border inspection system.

In the enforcement area, we have pursued and implemented several special operations to improve our interdiction methods. For example, operation winter night is a joint Customs/DEA program which utilizes shared intelligence, and has resulted in significant improvement in developing narcotics enforcement profiles—in turn, this improvement has led to several important drug seizures.

Also, we have developed programs which improve our control of enforcement arrangements with commercial carriers. These programs, which are tailored to each carrier, will enhance Customs ability to target weak points in the narcotics interdiction system, thus further shutting off avenues of narcotics trafficking.

Mr. Chairman, I could go on, but all this is to say that Customs has made great strides this past year in many areas. All of these improvements are geared to enhancing our drug interdiction role, better serving the traveling and importing communities, and positioning Customs for future large-scale increases in passenger and cargo traffic. With your continued assistance, we will continue to build on these accomplishments.

This concludes my remarks. I will be happy to answer your questions.

RESPONSES TO QUESTIONS SUBMITTED BY SENATOR BENTSEN

PROBLEMS GETTING TEXAS BORDER RADAR OPERATIONAL

Senator BENTSEN: I understand that Customs' plan to get three new radar aerostats for drug interdiction operational on the Texas border [at Marfa, Eagle Pass, and Rio Grande City] is months behind schedule. One of the balloons even broke its moorings and flew away. I also understand the aerostats are subject to significant down time. Are they really practical? When will the Texas aerostats be in operation?

Commissioner HALLETT: Two General Electric Company aerostat systems located at Marfa, Texas, and Rio Grande City, Texas, were grounded on December 28, 1989. This action was taken as a result of the destruction of the Eagle Pass, Texas, system on that same date. This loss was due to a tether break during inhaul operations. The Marfa and Rio Grande City systems remain grounded. An extensive investigation is currently being conducted by the General Electric Company into the cause of the tether separation at Eagle Pass. A final report, to include detailed investigative and test data, is expected by mid-March 1990. The estimated operational dates for the three General Electric aerostat systems is still to be determined. This will be predicated upon an analysis of the results and findings of the ongoing investigation and recommendations to be submitted by the General Electric Company.

In fiscal year 1989, the Yuma, Fort Huachuca and Deming systems had on-station availability rates of 83, 65 and 74 percent, respectively. In the first quarter of fiscal year 1990, the Yuma, Fort Huachuca and Deming systems averaged on-station availability rates of 84, 78 and 82 percent, respectively.

Operational experience has proven the land based aerostat radar system to be the most cost effective method of providing continuous, wide area, low-altitude radar surveillance required to detect small, low-flying smuggler aircraft penetrating U.S. border airspace. Additionally, their detection capability and deterrent factor have been repeatedly demonstrated in both the Florida/Caribbean and Southwest border theaters of operations.

ARE PROCEDURES ADEQUATE IN THE ABSENCE OF COMPLETED RADAR NET

Senator **Bentsen**: What assurance can you give us that, in the absence of full radar capability on the border, Customs is doing the best it can at intercepting drug smugglers? Are you supplementing existing radar capacity with other investigative efforts? If not, why not?

Commissioner **Hallett**: In the absence of full radar capacity, the Customs Surveillance Support Center's fleet of P-3 AEWs and P-3As along with DOD assets work to cover the gap until the planned radar network is completed.

Customs Special Agents also are collocated at all Air Operations Branches. We have initialed a joint multiagency investigative effort, Operation PILOT, aimed specifically at drug smuggler pilots. In this investigative operation, all resources are targeted on the most notorious and successful smuggler pilots. The major narcotics organizations are thereby denied this most essential resource. Customs and FAA also are investigating false pilot and aircraft registrations. In addition, Customs has undercover operations targeting smugglers who used aircraft in their operations.

DECLINE IN SEIZURES OF AIRCRAFT

Senator **Bentsen**: There has been a decline in interdiction and seizures of aircraft in the Southwestern border area. Is there something wrong, or can you attribute the decline to increased deterrence?

Commissioner **Hallett**: The combination of the establishment of the Customs Command, Control, Communications and Intelligence (C3I) Center at March Air Force Base, Riverside, California, with the resultant integration of all FAA/military/and Customs aerostat radar data and the increase in aviation personnel and assets in the Southwest is apparently deterring potential drug smugglers.

During calendar year 1989, aircraft seizures in the four border states (Texas, New Mexico, Arizona, California) consisted of 9,722 pounds of cocaine and 9,913 pounds of marijuana.

A Drug Enforcement Administration report prepared by the El Paso Intelligence Center (EPIC), dated November 28, 1989, entitled "Drug Smuggling Across the Southwest Border," states, that "publicity surrounding the installation of the aerostats has apparently caused smugglers to find other means to deliver their cocaine and marijuana across the border" and that most flights are "believed to be off-loaded in Mexico for transshipment across the southwest border in land conveyances."

BORDER FACILITY IMPROVEMENTS

Senator **Bentsen**: Customs and the General Services Administration (GSA) have been working on upgrading Customs facilities on the border. Through this fiscal year, almost $140 million was appropriated for this purpose. Can you give me a progress report? Are there any significant delays or problems getting this project completed?

Commissioner **Hallett**: Attached is a status report on the Southern Border Capital Improvement Program.

Attachment

Southern Border Capital Improvement Program

INTRODUCTION AND BACKGROUND

The Fiscal Year (FY) 1988 Continuing Resolution (CR) authorized a major Capital Improvement Program for the renovation, replacement, or construction of inspection facilities along the United States/Mexico border. The CR authorized 47 specific facility improvement projects in Texas, New Mexico, Arizona, and California but also provided language that allowed new projects to be developed. Authorization for this program was the direct result of a 1987 survey of southern border facilities by a Customs Service task force. In addition, the General Services Administration (GSA) requested funding approval for a number of repair and alteration projects already planned at southern border stations.

The CR directed GSA to provide $28,678,080 in FY 1988 from their Federal Building Fund to begin planning, acquiring land, developing facility designs, and, in some instances, actual construction of specific projects. Congress considered the $28,678,080 to be a down payment on a multi-year construction and renovation program for southern border facilities that has since developed into a $302,777,949 facilities capital improvement program. An additional $12,000,000 was authorized in September 1988; $49,936,400 in 1989; and $54,681,320 in FY 1990. Total funding to date is $145,295,800, leaving an unfunded balance of $157,482,149 if all of the planned improvements and proposed new border stations are constructed. GSA plans to request authority to spend an additional $10.2 million in 1991. Funding beyond FY 1990 is uncertain at this time.

II. GENERAL SERVICES ADMINISTRATION

Congress tasked GSA with the overall responsibility to plan, coordinate, manage, and execute the Capital Improvement Program in close coordination with the Customs Service, Immigration and Naturalization Service (INS), and the Department of Agriculture. Financial responsibility for the program rests with GSA.

The Administrator of GSA has delegated responsibility for implementing the Capital Improvement Program to the GSA Regional Administrators in Fort Worth, Texas, and San Francisco, California. GSA's Central Office in Washington, D.C., provides program policy and oversight and coordinates the program with Congress, the Office of Management and Budget, and the State Department. The GSA Regional Administrators in Fort Worth, Texas and San Francisco California have each established an Interagency Task Force consisting of representatives from GSA, the Customs Service, the Immigration and Naturalization Service, and the Department of Agriculture to plan, develop, and manage the Capital Improvement projects. Each Agency is represented at the National, Regional, and local level.

The Fort Worth Task Force is responsible for managing 31 major projects in Texas and New Mexico at an estimated cost of $129,951,475. The Task Force presently meets bi-monthly, usually at GSA's Regional Office in Ford Worth although meetings are occasionally held down on the border. In addition, there are frequent technical meetings with the inspection service's technical experts, management representatives and GSA's architectural/engineering (A/E) consultants.

The San Francisco Task Force has direct project management responsibilities for the Capital Improvements in Arizona and California. An interagency Task Force similar to the one in Fort Worth is planning and coordinating 32 major projects with en estimated cost of $172,826,474.

III. CUSTOMS SERVICE REPRESENTATION

The National Logistics Center (NLC), working closely with Headquarters Office of inspection and Control, the Southwest Region, and the Pacific Region, serves as the overall program coordinator for the Customs Service. Each of the above offices are represented on both Interagency Task Forces. Cooperation within Customs and with GSA and the other agencies has been excellent. Most projects are currently in the master plan phase, under design or under construction. The pace has been extremely hectic. In order to keep the projects on track, the task force has mandated that design reviews be completed in 14 days. This has been a substantial drain on Customs resources but has been the key to keeping the program on track.

IV. COORDINATION WITH THE BORDER TRADE COMMUNITY AND LOCAL GOVERNMENTS

The CR instructed GSA to coordinate the final priority list of projects with the border trade community, the Customs Service, the State Department, and other Federal entities that enforce our laws at the border. This has been accomplished by meetings with the local Governments, attending bolder trade meetings, and conducting public hearings. GSA is invited to speak at quarterly meetings with the border trade community conducted by the District Directors. In addition, GSA has designated the Special Assistant to the Regional Administrator in Fort Worth as the Governments liaison to the border trade community and the local Governments for this program. The Border Trade Alliance has reviewed the final list of projects and has been very supportive in obtaining funding approval from Congress for the program.

V. PROGRAM FUNDING DOCUMENT—ATTACHMENT

SOUTHERN BORDER CAPITAL IMPROVEMENT PROGRAM

Location	Project	Project Cost	FY1988 Funding	FY1989 Funding	FY1990 Funding	FY1991 Budget	Unfunded Balance
TEXAS							
Brownsville							
-New Bridge	Proposed New Border Station	$12,000,000		$480,000			$11,520,000
-Gateway Bridge	Security Improvements	$250,000	$32,000	$218,000			
-Gateway Bridge	Lane Expansion	$1,450,000	$196,135	$1,253,865			
-Gateway Bridge	Admin Bldg Upgrade	$8,999,135	$1,200,000	$7,799,135			
-B&M Bridge	Replace Border Station	$5,567,500	$1,173,000	$4,394,500			
Los Indios	Construct New Border Station	$9,268,700	$587,000	$105,700	$1,535,000		$8,0[illegible],000
Progreso	Security Improvements/R&A	$600,400	$255,000	$345,400			
Los Ebanos	Replace Building	$250,000	$150,000	$100,000			
Hidalgo	Safety and Efficiency Improvements	$1,399,710	$289,510	$1,110,200			
Rio Grande City	Major Renovation/Expansion	$60,000	$60,000				
Roma	Safety Improvements/Dock Extension	$850,000	$850,000				
Falcon Dam	R&A/Building Expansion	$710,400	$400,000	$310,400			
Laredo							
-Lincoln/Juarez	Construct New Import Lot	$20,560,600	$5,745,000	($2,473,400)			$17,289,000
-Convent Street	Major Building Modernization	$3,301,118	$301,718	$2,999,400			
-Railroad Bridge	New Inspection Facility	$18,000	$18,000				
-New Bridge	Proposed New Border Station	$12,000,000		$1,000,000	$4,000,000		$7,000,000
Eagle Pass	Security Improvements/R&A	$6,829,800	$480,000	$4,947,800	$1,402,000		
Del Rio	Expansion of Inspection Lanes	$2,319,700	$445,000	$1,874,700			
	Security Improvements	$250,000	$250,000				
	Station Expansion	$11,193,000	$3,465,000	($1,220,000)			$8,948,000
Amistad Dam	Building Repairs and Alterations	$150,400		$150,400			
	Laredo District Totals	$96,829,455	$15,897,355	$23,396,100	$6,937,000		$58,799,000
Marathon	Project Cancelled						
Presidio	Security Improvements	$300,000	$300,000				
Ft. Hancock	Security Improvements	$100,000	$100,000				
Fabens	Security/Site Acquisition	$544,800	$100,000	$444,800			

Location	Project	Project Cost	FY1988 Funding	FY1989 Funding	FY1990 Funding	FY1991 Budget	Unfunded Balance
El Paso							
-BOTA	Bldg Upgrade/Expand Import Lot	$8,350,500	$442,200	$700,300	$7,208,000		
	Phase II Paving of Import Lot	$850,000	$850,000				
-PDN	Major Building Renovation	$4,000,400	$2,850,000	$1,150,400			
-Ysleta	Replace Border Station	$11,695,320	$2,651,320			$9,044,000	
NEW MEXICO							
Columbus	Security Improvements/R&A	$201,000	$200,000	$1,000			
Santa Teresa	New Border Station	$6,730,000	$378,000	$200,000	$6,152,000		
Antelope Wells	Security/R&A/ Housing	$350,000	$299,000	$51,000			
	El Paso District Totals	$33,122,820	$8,170,520	$2,547,500	$13,360,000	$9,044,000	
	GSA Region 7 Totals	$129,951,475	$23,867,875	$25,843,600	$20,297,000	$9,044,000	$50,790,000
ARIZONA							
Douglas	New Facilities	$4,172,000		$172,000	$4,000,000		
	Building Repairs and Alterations	$1,151,700	$228,000	$923,700			
	Safety Improvements	$118,000	$118,000				
Naco	New Facility	$3,640,600		$143,100			$3,497,500
	Building Repairs and Alterations	$220,000	$210,000	$10,000			
	Safety Improvements	$32,000	$32,000				
Nogales							
-Grand Ave	Building Repairs and Alterations	$13,781,000		$1,354,000	$12,427,000		
	Safety Improvements	$182,000	$182,000				
	Renovate/Expand Existing Station	$2,860,210	$439,310	$2,420,900			
-Mariposa	Building Repairs and Alterations	$5,413,630	$350,330	$774,300	$4,289,000		
	Safety Improvements	$143,000	$40,500	$102,500			
Sasabe	New Facilities/Employee Housing	$3,334,100		$149,100			$3,185,000
	Building Repairs and Alterations	$81,000		$81,000			
	Safety Improvements	$34,000		$34,000			
Lukeville	Building Repairs and Alterations	$573,100	$148,000	$425,100			
	Safety Improvements	$65,000	$65,000				

Location	Project	Project Cost	FY1988 Funding	FY1989 Funding	FY1990 Funding	FY1991 Budget	Unfunded Balance
San Luis	Building Repairs and Alterations	$1,404,800	$117,500	$1,287,300			
	Safety Improvements	$68,100	$68,100				
	Nogales District Totals	$37,274,240	$1,998,740	7,877,000	$20,716,000		$6,682,500
CALIFORNIA							
Andrade	R&A/Safety Improvements	$484,918	$243,000	$241,918			
	Replace Border Station	$6,613,038		$212,382			$6,400,656
Calexico	Construct New Border Station	$43,875,000	$880,000	$1,600,000		$1,174,000	$40,221,000
	Safety /Asbestos Abatement	$9,486,220	$655,000	$4,830,900	$4,000,320		
	Building Repairs and Alterations	$828,790	$828,790				
San Ysidro/Otay Mesa	Repairs & Alterations at Virginia St	$582,963	$75,000	$367,000			$140,963
	Safety/Asbestos Abatement	$8,390,253	$2,350,353	$2,673,900	$3,366,000		
	Building Repairs and Alterations	$22,455,800	$1,172,980				$21,282,820
	Construct Outdoor Firearms Range	Cancelled	$350,000	($350,000)			
	Reconfigure Secondary Lot	$95,520	$95,520				
	Signage and Security Improvements	$2,478,217	$517,000				$1,961,217
	New Commercial Facility	$23,334,411	$6,500,000	$721,700	$2,000,000		$14,112,711
	Improve Existing Commercial Lot	$5,368,950	$456,950	$3,458,200	$4,302,000		($2,848,200)
Tecate	New Inspection Facilities	$10,845,467	$130,600	$2,205,405			$8,509,462
	Building Repairs and Alterations	$912,667	$756,272	$156,395			
	San Diego District Totals	$135,552,234	$14,811,465	$16,115,800	$13,668,320	$1,174,000	$89,782,649
	GSA Region 9 Totals	$172,826,474	$16,810,205	$23,992,800	$34,384,320	$1,174,000	$96,465,149
	Southwest Region	$144,210,142	$22,589,380	$27,651,200	$18,576,480		$73,541,340
	Pacific Region	$135,552,234	$14,811,465	$16,115,800	$13,668,320	$1,174,000	$89,782,649
	Total Program	$302,777,949	$40,678,080	$49,936,400	$54,681,320	$10,218,000	$147,284,149

SOUTHWEST BORDER IMPROVEMENTS

Senator BENTSEN: With increased staffing, better facilities and equipment, and other initiatives to date (including consultations with Mexican customs), have you seen measurable improvements in cutting delays on the Southwestern border? What more do you plan to do?

Commissioner HALLETT: Traffic volumes along both the northern and southern border have increased dramatically in the past five years. Given the workload increases, Customs has still maintained efficient traffic movement at major crossings, while delays have not increased. The benefits of facility improvements can be felt at the El Paso Import Lot where the facility entrance was improved and the number of processing booths expanded to include separate facilities for Line Release shipments. At the two busier bridges in El Paso, the expansion and addition of two additional primary processing lanes at each crossing has helped to keep traffic delays down. At Calexico, California, where the Southern Border Facilities Improvement Plan calls for a new facility, Customs and Immigration have employed innovative procedures as an interim measure to help minimize lengthy lines and traffic delays. The agencies are doubling up inspectors in the primary booths to allow faster processing and doubling the vehicles being processed through a lane. Customs and INS along the southern border continue to employ creative procedures to keep traffic moving smoothly while carrying out our enforcement and interdiction responsibilities.

In the area of cargo processing, several initiatives have produced positive results. For examples the expansion of Line Release processing of repetitive, low-risk shipments has eliminated the need for approved shipments to wait for inspection and release in the crowded import lots. Instead, the entry documents are rapidly reviewed by our primary inspector, and the truck is normally released directly from that point.

In addition, based on positive test results of the Maquiladora Sealing Program in El Paso and Brownsville in May of 1989, we have begun to expand this program to other locations on the Southern Border. This program expedites approved maguiladora shipments through Mexican Customs export control and permits rapid entry processing on the U.S. side through Line Release.

We are actively taking steps to align hours of service with the Mexican Customs wherever extended hours will help to alleviate the traffic congestion. As a result, our larger crossings are now open for periods beyond normal business hours of 8:00 a.m. to 5:00 p.m. Commercial traffic congestion at the port of El Paso, which is now open 24 hours, has been dramatically reduced.

Our efforts to improve service in the near future will include:

1. adding four (4) more Line Release locations on the Southern Border during FY 1990, and the installation of networking equipment at the busiest locations to permit more than one lane at a given crossing to process cargo through this system;
2. improving our automated cargo selectivity system to reduce the number of data elements required to release cargo on the border, and offering enhanced communications protocol to allow faster and more efficient exchange of entry information between Customs and ABI brokers; and
3. exploring new technology which will permit inspectors to rapidly and reliably examine enclosed spaces in vehicles and containers without damaging the container or its contents. Devices under consideration include portable contraband detectors, which measure density differences, infrared laser range-finders, and large-scale x-ray devices.

We have included in our FY 1991 budget request an initiative to add 175 inspectors to the Southwest Border. These personnel would allow us to carry on a sustained enforcement program without further delaying legitimate travelers and merchandise.

RESPONSE TO QUESTION FROM SENATOR HEINZ

CUMULATIVE EFFECT OF ABSORPTION

Senator HEINZ: While the cuts in the Customs Service's budget from Gramm-Rudman during the last couple of years have been small, Customs has been required to absorb all increased costs related to wage increases and insurance premium increases. The cumulative effect of these cost increases and budget cuts has not been small. Domestic industries that rely on Customs enforcement of the trade laws are concerned about the impact that all of these increased costs might have on the money available for commercial enforcement activities, such as "enforcement blitzes" and money to keep the mobile metal analyzers on the road. Should they be concerned? Has there been a reduction in the money available for enforcement activity.

Commissioner Hallett: It is true that Customs is absorbing increased costs which have required staffing reductions, but despite these cuts, Customs believes that its heavy investment into the Automated Commercial System (ACS) and its ability to selectively designate cargo for examination should offset any significant impact of reduced staffing.

Although the number of special enforcement blitzes may decline somewhat, funds are still available for high priority special operations. In combination with better intelligence, and better selectivity through ACS, Customs is confident that those people who depend on this Agency's enforcement of the trade laws, need not worry.

The Commissioner of Customs,
Washington, DC, March 16, 1990.

Dear Senator Symms: In your communication received on February 20, 1990, you indicated that the petroleum industry, represented by the American Petroleum Institute (API) presented to Customs a Proposal referred to as a "pool concept" to resolve the Problems stated to have been created by Customs Service Decision (C.S.D.) 88-1 and requested for the record Customs' response to the proposal. An explanation of the background in this matter is helpful in responding to your request.

The law under 19 U.S.C. 1313(b) permits the substitution of merchandise for imported duty-paid merchandise, both of which are of the same kind and quality, for use in the manufacture of new articles that are exported for drawback (refund of duties) within certain time limitations notwithstanding that the articles may have been made entirely with the use of the nondutiable substituted merchandise. The intent expressed in the legislative history is to enable domestic capital and labor to compete with foreign manufacturers in the foreign market by relieving domestic industry from the expense of duties for the raw materials used in manufacture for, export and the expense of maintaining separate inventories for imported and domestic raw materials. Finished articles such as jet fuels made from crude petroleum under drawback conditions, are drawback products eligible for a refund of duty upon exportation, An eligible article is an article whose identity as a drawback product has been maintained. All other articles are ineligible even if exported, The law does not permit substitution of an ineligible article for an eligible article and C.S.D. 88-1 simply restates that law.

In C.S.D. 83-54, the Customs Service permitted drawback claimants to reach their drawback products that are commingled in storage with fungible nondrawback products provided that the inventory records showed that there were in fact drawback products available in the commingled storage at the time of exportation for drawback.. We found by audits that claimants were using a 30-day accounting period to retroactively claim drawback when drawback products were not available in the commingled storage at the time of exportation and thus substituting finished products. C.S.D. 88-1 affirmed the Customs legal position and the issue in C.S.D. 88-1 is now pending in the Court of International Trade which we expect will be decided shortly. H.R. 2033 was introduced in the Congress and S. 1648 in the Senate on behalf of the petroleum industry which would retroactively reverse the legal position on the Customs Service, permit the substitution of finished articles, and make major changes in the drawback laws beyond the issue in C.S.D. 88-1.

The Customs Service expressed concern and opposition to these Bills. The Administration has formally opposed both Bills. In meetings with Congressional personnel and representatives of the API, the Customs Service was requested, in lieu of legislation, to meet with representatives of the APE to carry on a dialogue and attempt to work out procedures, other than those involved in C.S.D. 88-1 and within the framework of the existing drawback laws, to identify eligible drawback fuels which are commingled in storage with other fuels that are not eligible for drawback. Several meetings have taken place resulting in the submission from API dated February 12, 1990, referred to as the "pool concept". It is in this background that you asked us to provide for the record the Customs' response to the "pool concept".

The petroleum industry has been pressing this issue since 1983 and the Customs Service in issuing C.S.D. 88-1 was of the opinion that the affirmation of the identification procedure as approved in C.S.D. 83-54, represented "the broadest lawful exercise of administrative discretion currently possible under section 1313." The API claims that they cannot comply with the record-keeping requirements of those rulings and it is doubtful that they can produce other record-keeping procedures to show compliance.

The API submission of February 12 refers to waiting for additional information from the pipeline company and storage company who are also custodians of records in this matter which are essential for identification. To date, that information has not been submitted to Customs. So long as Congress imposes the obligation to verify the bona fides of duty refunds on the Customs Service, we cannot act unless we have adequate information. Since a petroleum company will not be responsible for lading fuels on qualifying vehicles or for exporting the fuels, it is critical for revenue protection that adequate records are maintained to quickly identify the existence of ineligible practices. Also the Customs Service is currently attempting to obtain essential information in this matter by auditing existing drawback claims for the exportation of jet fuels. Of course, these requirements would be significantly changed if S. 1648 were to be enacted.

Enclosed is a list of attachments for your information and assistance in understanding the background of this complex matter. We appreciate your concern and if we can be of further assistance, please feel free to call upon us.

Sincerely,

CAROL HALLETT.

Hon. STEVE SYMMS,
U.S. Senate.

Enclosures.

PREPARED STATEMENT OF PETER V. HANDAL

Good morning, Mr. Chairman, members of the Committee. I am Peter V. Handal, president of Victor B. Handal & Bro., Inc., a New York based importing and manufacturing concern. I appear before you today in my capacity as an Officer and Director of the American Association of Exporters and Importers (AAEI), and Chairman of its Trade Policy Committee.

The Association consists of over 1,200 company members engaged in every aspect of international trade. Most AAEI members deal with Customs on a daily basis.

AAEI appreciates the opportunity to present, on behalf of its membership, their views on Customs' Budget and user fees. AAEI is here today to urge Congress to take this opportunity to end user fees for the entry of merchandise into the U.S. Customs territory. In principle and in practice, the fees are inconsistent with U.S. international obligations. Even if a modified fee schedule is adopted, the inherent problems and unfairness will continue to contradict the GATT and create insurmountable operational problems for U.S. Customs.

USER FEE IMPLIES "USE"

AAEI, in principle, is opposed and will always oppose Customs user fees. The fees are little more than double taxation for government mandated services. The U.S. Customs Service is a tax collection agency which also functions to regulate trade. In its collection capacity, its role is analogous to the role of the Internal Revenue Service in collecting income taxes. To impose a "user fee" for the privilege of paying the customs duties required to be deposited as a condition of entry of imported merchandise is analogous to charging a taxpayer a fee for the privilege of filing an income tax return and paying income taxes. This is a concept which clearly would offend the tax paying public; it is no less offensive to the importing public.

The Customs' clearance of imported merchandise, inspection of merchandise, assessing duty, and insuring it is not prohibited from importation by law or regulation, is not a "service" to the importer. It is an obligation of the Customs Service to the public to carry out these functions and to insure that the correct amount of customs duty is deposited, and that no law is violated by importation. This is done for the general welfare. AAEI agrees with the General Accounting Office which concluded, "GAO does not believe there is merit in assessing user's fees for those formalities that are not voluntary, because these formalities protect the nation as whole." GAO Report OC-9-85-1.

The Administrative Conference of the U.S., in their 1987 report on user fees, clarified the standard to be applied when a government service gives only incidental public benefit, then it should be funded out of special fees by those who require the service to be performed. 'The argument that U.S. Customs' "services" primarily benefit importers and only give incidental benefits to the general public is without merit. Customs was established in 1789 to protect the borders and revenue of U.S. Without Customs, the flow of all types of goods into the U.S.—genuine, counterfeit, beneficial, cangerous—would be unimpeded. Legally entering merchandise and paying Customs duties is not a privilege. It is required by law. Those who choose to import are taxed, in the form of duties (tariffs), for doing so, with billions of dollars collected benefiting the General Treasury. As such, the cost of this operation should be borne by the general revenue and not by double taxation of the importer.

Let us state for the record, that AAEI's members are not opposed to additional fees that confer a direct benefit upon the requester of the operation. Charges for personnel overtime, or to keep a port open after hours, or to place a Customs employee on a business' premises are common and have been an accepted part of business practice for years. However, the merchandise processing fee of .17% ad valorem is not such a charge. It was imposed as a revenue measure as part of the budget reconciliation process in 1986. The importer does not ask Customs for special favors in the daily processing of merchandise, the importer is required to submit to Customs procedures.

The imposition of such user fees was *not* recommended by President Reagan's Private Sector Survey on Cost Control, in the Report of the Task Force on User Charges. As pointed out therein by the Grace Commission (at page 196), Customs passenger processing and requirements for the formal and informal entry of merchandise are for the benefit of society as a whole. These functions protect the revenue, deter smuggling and the importation of contraband, and are necessary to enforce the laws. As the Report further observed, the formal and informal entry of goods and entry by mail are services that support the general economy and for which a fee—duty on goods or postage—has already been paid. In addition, these functions also serve as a protection for domestic industry.

The economics of the situation weigh a heavily against continuation of the user fees, as the weight of opinion. In fiscal year 1988, Customs collected over $16 billion from commercial operations, a little over $600 million of which was attributable to the user fees. For FY 1989 Customs collected close to $19 billion. Projected receipts for 1990 will exceed $19.5 billion. For the past five fiscal years, Customs has returned at least $18 for every dollar it received in appropriations. U.S. businesses that export and import are already paying, and quite substantially, for those "privileges." There simply is no need or justification for these additional taxes disguised as user fees.

GATT INCONSISTENCY

AAEI understands that political reality overrides principle on occasion. The need to reduce the U.S. budget deficit without raising taxes can place undue pressure for adoption of unnecessary measures. The Customs user fees, despite the inconsistencies with the GATT, were imposed in such a climate. Political pressures, however, should not override U.S. international obligations or fundamental fairness. The GATT Panel Report of 17 November 1989 on page 39 found that the U.S. user fees, imposed for the regular importation of merchandise were "simply taxes on imports" and as such were inconsistent with the fundamental principles of the GATT.

AAEI does not take issue with the GATT Panel finding, and indeed, warned Congress and the Administration of such a finding in testimony before and after the fee became effective. AAEI's purpose today is not to say "we told you so." Rather, it is to ask Congress to focus on the simple solution to the economic and political problems caused by the fee.

The Treasury Department readily admits to what the GATT Panel found over two years ago: that the user fee is a revenue raiser. Treasury appears to judge its effectiveness by the level of revenue raised, not by an increase in the level of Customs Service. Even if the fee were to be modified it would not solve the two major problems with the fee, its costs to U.S. business and the U.S. government and its continued inconsistency with U.S. international obligations.

COST TO BUSINESS

Congress and the Administration appear only to be focusing on one side of the ledger. Importers have paid close to, if not over, $3 billion dollars in user fees since 1986. The U.S. government believes it is reducing the budget deficit. AAEI wants to emphasize this is not a question of politics, of a choice between raising taxes across the board or maintaining user fees, neither is it a question of reducing the deficit. Rather, it is a question of double taxation of U.S. business that import with no corresponding value to those taxed and despite unanimous opposition to the tax. AAEI members do not believe that fee raises enough revenue to cover its cost, or that it benefits either Customs or the import community.

The Customs user fee already has increased the cost to importers beyond the basic charge. A modified fee will be no different. Many customs brokers charge an additional fee to pay and account for the user fee. Whatever the private sector charges to process the fee, it is certain that the cost to U.S. government is greater. And despite the fee, importers must pay contractors hired by Customs in order for goods to be inspected, as is required by the central Examination Stations system. Another cost is the U.S. companies cost in recording the user fee as a separate entry in its books. The cost to business also can be counted in terms of competition. The user fee ultimately is passed on to the consumer and even if the full cost of the fee is not reflected in the final price, the increase can make a large difference in the competitiveness of the merchandise. The resulting sales loss will lower profits and thus tax revenues. This fact is reflected in the recent ITC Report that found an increase in imports under the tariff provisions for U.S.-made goods processed abroad (807, now Chapter 98), due to the user fee exemption those goods enjoy. The other growing cost to U.S. business of the Customs user fee is the time spent since 1985 to eliminate this fee. The time in meetings, communications and lobbying that U.S. business has and continues to expanded, all in order to convince *its* representatives in Congress and the Administration to repeal the fee is staggering. Yet, the opposition continues not only on principle but because of the enormous financial cost this fee imposes, and the resulting impact on profits.

COSTS TO THE U.S. GOVERNMENT

The Treasury Department appears to scoff at the idea that the fee results in any costs to the U.S. This is tantamount to saying there is no cost in collecting and processing tax returns. Of course there is the cost, similar to business, of collecting, processing and recording the fee. In fact, Customs even has a separate office and staff devoted to user fees. But there are other costs as well, such as the fact that Customs, Treasury and OMB must separate out the fees for purposes of the Budget calculations. Then there is the resulting cost to the U.S. Treasury of less tax revenue since the fee comes out of a company's profit.

However, even greater is the cost to Congress and the Executive Branch in time not spent on other issues due to the constant and prolonged negotiations, lobbying and hearings, such as this one, on the fee. AAEI believes it speaks for everyone, on both sides of the is sue, when it states that we much prefer to talk about something else. Modifying the fee will not solve the problem either, as the modifications will require constant tinkering due to exemptions for special interest groups or policy reasons such as expanding trade with newly "democratized" countries. Downward modifications will also be necessary as Automation reduces processing costs.

Finally, the cost to the U.S. will be measured in GATT-sanctioned compensation or mirror-image taxes on U.S. exports. If the U.S. continues its failure to bring the fee into GATT-compliance, its trading partners will have a legitimate right to request an receive compensation in the form of lower tariffs on imports, thus negating the revenue raised. This will happen even if the U.S. adopts a modified ad valorem fee with a cap as there is no evidence to suggest that the cost of processing an import is directly proportionate to the value of the goods.

A transaction-based fee arguably may be accepted by the GATT. All that would do would be to open the door for the same fees or taxes on U.S. exports. This would reduce the competitive edge of U.S. companies in overseas markets, reducing sales, possibly increasing the U.S. trade deficit, but definitely reducing profits of companies that export and in turn taxes to the U.S. Treasury.

THE FEE IS UNNECESSARY FOR AN EFFECTIVE CUSTOMS SERVICE

Proponents of the fee argue that it allows the U.S. to increase the appropriation for U.S. Customs, thus increasing the "service" to those who pay the fee. Nothing can be farther from the truth. It is true that the budget for Customs Commercial Operations has increased since the fee's inception, but thus is only due to Congress' insistence that the Administration do so. The Administration wanted to cut Customs personnel and "service" despite the fee. From 1986 to 1988, the increased appropriations went to fund Customs enforcement operations, mostly drug enforcement. In 1988, Congress mandated that a certain of commercial personnel be retained. However despite the welcome mandate, Customs had less import specialists in 1989 than it did in 1975, even though trade increased from just over 3 million entries to 8.9 million. This recent increased attention to Customs commercial side has had little impact on service to importers as evidenced by the just released House Ways and Means Subcommittee on Oversight report. The investigation was conducted from 1987 to 1989 when the user fee was in full effect. It found flagrant abuse in mismanagement of and disregard for Customs commercial operations, including commercial facilitation. The total disconnection between the user fee and adequate staffing levels was also evidenced by the Fall 1989 announcement that Customs would cut 91 positions.

Further, the continuance of the user fee will have little effect of the ability of Customs to improve commercial operations. Customs collected over $18 billion dollars in FY 1990 and is expected to double that amount by FY 2000. Increased funds and staffing combined with automation will only increase that projection. AAEI supports Customs request for $795 million for FY 1991 for commercial activities. As the second largest revenue raising agency the service has not reached the point of diminishing return. Commissioner Hallett's welcome commitment to improving the commercial facilitation aspects of Customs will make the fee unnecessary.

A MODIFIED FEE WILL NOT SATISFY U.S. INTERNATIONAL OBLIGATIONS

There are a number of GATT inconsistencies which will remain even if the current fee is modified. First, whether ad valorem or transaction-based, user fees on imports are not consistent with the objective of Article VIII(b) of the GATT, that the contracting parties recognize the need for reducing the number and diversity of fees and charges. U.S. fees on imports, to fund harbor dredging, commercial operations or trade adjustment assistance programs, fly in the face of Article VIII and may prompt other industrialized countries, most of who look to the U.S. as leader in trade, to impose or increase the number and amounts of their fees on U.S. exports.

Second, as the GATT Panel ruled (p. 59) and the USTR's Office recognized in a 1987 briefing memo which summarized the decision, "exemptions to the user fee are 'GATT illegal' to the extent that they result in over-charging non-exempt imports." There is little expectation that all the exemptions to the user fee can be legislated away. Even if they were to be, as in the U.S.-Canada Free Trade Agreement and the proposed exemption for goods from Israel under the U.S.-Israel Free Trade Agreement, the results still mandate the fee's expiration. Either non-exempt merchandise bearing the cost of exempt goods clearly contradicts of the GATT, or the substantial shrinkage in the amount collected by the fee as the U.S. enters into more "free trade" agreements will eliminate the only benefits the U.S. government derives from the fee: hundreds of millions of dollars in revenue and at least on paper a reduction in the overall budget deficit.

The very fact that the cost of processing goods from Canada and Israel can be exempt from the fee only underscore its fundamental GATT inconsistency regardless of its form. There is no doubt that a cost is involved in processing goods from Canada, Israel, CBI countries and the least-developed developing countries (LDDC's). By providing fee exemptions the Administration and Congress are admitting that these are not "user" fees but merely "revenue enhancers" or taxes" on imports, and prohibited by the GATT.

A third GATT inconsistency also arises from the exemptions. Article I of the GATT, known as the MFN clause, states that all nations must receive the same benefits provided to any one country. Certain lesser developed developing countries (LDDC's) and CBI countries are exempt from the current fee due to long-standing U.S. foreign economic policies. Three other GATT members raised the argument that the U.S. exemption of LDDC's and CBI countries violates Article I. The GATT Panel did not actually rule on the arguments because the three were not parties to the dispute but stated, "No answer in opposition to these legal claims was given, *nor was the panel aware of any that could be given.*" (emphasis added). GATT Panel Ruling at 58. The U.S. is bound to face another GATT Panel, and in AAEI's opinion, bound to lose again if a modified user fee contains any exemptions.

Fourth, and probably most important, the GATT Panel Ruling can be interpreted to state that *any* user fee on the regular importation of merchandise is an ordinary tax on imports and therefore GATT-inconsistent. Although the parties to the GATT case did not argue the point, the panel held:

> Granted that some government regulatory activities can be considered as "services" in an economic sense when they endow goods with safety or quality characteristics deemed necessary for commerce, most of the activities that governments perform in connection with the importation process do not meet that definition. *They are not desired by the importers who are subject to them. Nor do they add value to the goods in any commercial sense. Whatever governments may choose to call them, fees for such government regulatory activities are, in the Panel's view, simply taxes on imports.* (Emphasis added).

AAEI does not believe that the U.S. is willing to contravene the GATT's prohibition on taxes on imports.

The U.S. has other international obligations besides the GATT.

Treaties with other countries, that reduce tariffs and grant duty-free-treatment, such as the U.S.-Canada Free Trade Agreement and U.S.-Israel Free Trade Agreement are important to the U.S. foreign relations. Unilateral preference programs such as the GSP and CBI foster economic as well as political stability of U.S. allies. The imposition of any type of import fee violates not only the written provisions of these laws, but also their spirit. AAEI does not believe that Congress or the Administration should allow short term budgetary pressures to remove the U.S. long term commitment to economic expansion.

EXPIRATION OF THE FEE

There is a simple, common-sense answer to the economic and political problems caused by the Customs user fee: Mandate the fee's expiration when the cost of the GATT-consistent Customs commercial operations fee's in FY 1990 has been met. Only in this way, can the fee's cost to U.S. business and its fundamental unfairness be alleviated.

AAEI is aware of the budgetary concerns which have allowed a unanimously opposed fee to remain in place. As an alternative to the expiration date proposed above, AAEI members could accept the expiration date set by law, 9/30/90. The resulting surplus of fee collections over the costs of commercial processing would help ease the budgetary pressure in FY 1991.

In fact, the surpluses generated each year of the fee's existence more than offset the alleged "loss in revenue" to the U.S. Treasury. Starting in FY 1987, due to the ad valorem nature of the user fee, Customs has collected at least $100 million each year over its total appropriation for its commercial operating costs.

If the Administration's argument about GATT-consistency is accepted, and the resulting exempt items are subtracted from the calculation the surplus soars to over three-quarters of a billion dollars. These surpluses represent money due and owing to U.S. businesses that import. Should the fee not be mandated to expire, AAEI members and the rest of the trade community will demand a refund.

CONCLUSION

Mr. Chairman, members of the Committee, the members of AAEI are opposed to continuation of the Customs "user fee." The fee, as found by the GATT Panel, is nothing more than 'tax on imports' levied on importers who do not benefit from government required "Customs Services'. The fee also is unnecessary as U.S. Customs is a revenue producing agency, second only to the IRS. Customs consistently returns close to $20 for every $1 it receives in appropriations and has not reached the point of diminishing returns.

Even if the fee were to be modified, U.S. international obligations, fundamental fairness, and the continued cost to U.S. Customs to administer the fee, and the resulting reduction in revenue render its continuation more costly in economic and political terms than its rescission. There is no point in debating which type of fee is more fair or less harmful.

The GATT is quite clear in its mandate that charges, taxes, and fees on imports can neither cause the favorable treatment of one country over another nor measure up to those standards. U.S. trading partners then need only to initiate another GATT Panel to be entitled to compensation, in form of lower tariffs on their products. Obviously, there will be no net increase in budget revenue. Further, the U.S. stature as the leader in world trade expansion will be diminished, especially since no other major industrialized nation imposes such fees. If compensation is not requested, then U.S. exports will face a similar tax, again resulting in less revenue to the U.S. and a possible increase in the trade deficit.

The members of AAEI recognize the budgetary pressures, but on balance urge Congress to take this opportunity to mandate the fee's expiration. Thank you, Mr. Chairman for the opportunity to express the views of the 1200 members of AAEI. The Association stands ready to assist the Committee in its endeavors on this issue.

Prepared Statement of Kenneth A. Kumm

Mr. Chairman, my name is Kenneth A. Kumm, Manager for Customs and Trade Affairs, the 3M Company, St. Paul, Minnesota. I appear here today as Chairman of the Joint Industry Group, a business coalition of over one hundred trade associations, and business and professional firms involved in international trade with an interest in customs matters.

I thank you for the opportunity to appear before this committee as you address the problems presented by the maintenance of the customs user fee by the U.S. Customs Service, a fee which has been ruled inconsistent with this country's international obligations under the General Agreement on Tariffs and Trade (GATT).

As this Committee is aware, the Joint Industry Group has been and remains opposed to the concept and the imposition of customs user fees for those activities by the U.S. Customs Service which bestow no special benefit on importers. In particular, we have consistently opposed user fees intended to cover the costs of basic governmental activities or customs formalities required of the Customs Service under U.S. trade laws and regulations for the general public good.

Since the inception of the current fee, the Joint Industry Group has challenged the Customs Service to produce evidence that the fees collected were related to "services rendered," and that the costs identified by the Service as "commercial services" costs did not encompass activities which were not related to the actual processing of entries. To date, the business community has not received any information which would lead us to believe that the Customs Service is willing, or as is more likely the case, is able to produce such information.

Instead, we continue to see various proposals put forth by the Customs Service to "fix" the fee schedule which are based at best on guesstimates of the costs incurred. It is our belief that these fixes are probably derived by first determining how much revenue they wish to raise, and then developing the method to achieve that revenue target. In other words, the fee proposals are not based on an analysis of processing costs but are driven by a fiscal goal, the very purpose found unacceptable by the GATT panel finding.

With regard to fiscal goals, Mr. Chairman, I would like to call your attention to a letter the Joint Industry Group send to Secretary of Treasury Brady concerning the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) under which the customs user fee was originally enacted. In that letter we stated in part:

> ". . . (W)e have had occasion to review the Consolidated Omnibus Budget Reconciliation Act of 1983, as amended (19 U.S.C. 59c), which contains the existing authority for the current fee system. The Joint Industry Group notes that a report to Congress was mandated at the end of Fiscal Year 1988. That report, according to the statute was to set forth your recommendation for bringing the merchandise processing fee fund in balance biannually.
>
> "The Joint Industry Group is informed that such report was not filed with the Congress.
>
> "This same statute would require a similar report. by the close of Fiscal Year 1990 . . . ."

In response to our letter, Assistant Secretary of the Treasury, Salvatore R. Martoche wrote in part:

> "Customs user fee statute does include a fee adjustment and zero-balancing clause. Unfortunately, it is linked to the timely passage of an authorization and appropriation bill for Customs each year . . . We believe that both of the previously submitted legislative initiatives fulfilled Treasury's obligation to report to the Congress . . . ."

It is for this committee to decide how well the Treasury carried out the so-called "fee adjustment and zero-balancing clause contained in the 1985 Budget Act (COBRA). I would like to submit the original Joint Industry Group letter addressed to Secretary Brady and the response from Assistant Secretary Martoche for the Committee files, Mr. Chairman.

Returning to the GATT panel finding, the core of that finding in February 1988, was that the United States customs fee is not demonstrably related to the actual costs of activities performed by the Customs Service in entering goods into this country. Fee proposals based on a revenue target divorced from analysis of the underlying costs to be recovered perpetuates the spirit of noncompliance with the GATT decision.

Our trading partners, particularly the European Community, have indicated that continued application of the U.S. customs user fee will result in their imposition of similar border fees. This is likely to occur if the U.S. continues the current, clearly GATT-inconsistent fee, or even if the Administration is able to construct a fee which wins grudging approval in the GATT. Either scenario will negate the difficult and timely efforts by U.S. negotiators in the past to eliminate nontariff border fees.

Ironically, the decision to maintain the current fee, or to extend one similar in effect, will occur during these last months of the most far-reaching and important round of trade liberalization negotiations in the history of the GATT. In either case, the imposition of the nontariff border fees by our trading partners would create disadvantages for U.S. exporters at a time when greater exports are critical to the U.S. economy.

During the debate on H.R. 3299 last year, the General Accounting Office (GAO) was asked to initiate a study on the issues surrounding the user fee. That study is expected to be completed later this Spring. In particular, we understand that GAO was attempting to establish the cost basis for the activities performed by the Customs Service in processing entries. Based on our discussions with the GAO, we further understand that the Customs Service does not maintain the type of information and records necessary to accomplish the cost study with any degree of accuracy. This understanding is in keeping with the recent report on the U.S. Customs Service by the House Ways and Means Oversight Subcommittee. The Oversight Subcommittee found that most U.S. Customs Service management decisions are made without supporting data or analysis." While we look forward to the results of the GAO's efforts, we are not optimistic that the report will shed much light on this debate.

Based on the insufficient data maintained by the Customs Service, the GAO findings are unlikely to provide sufficient information on the cost of the activities performed. It is these costs to which the user fee must, by GATT principles, be related to enable the Congress or the business community to react knowledgeably to the latest user fee proposals by the Administration.

COSTS ASSOCIATED WITH THE USER FEE

Let us set aside for the moment the necessary but apparently unattainable linkage between the costs and the fee structure. The Joint Industry Group strongly believes that maintaining the customs user fee carries with it real domestic and international economic costs to the government which raise very serious doubt about the usefulness of the customs user fee as a revenue producer.

First, there are the costs already incurred by U.S. trade negotiators to eliminate other countries' nontariff border fees, which elimination has been placed in real jeopardy by the U.S. fee.

Second, there are the costs associated with defending the current U.S. fee internationally, including manhours, travel and political costs.

Third, there are costs incurred by the U.S. Customs Service over the past 18 months to defend the fee domestically and to attempt to extend and expand the fee beyond its mandated September 30, 1990 sunset. The Customs Service also has expended considerable time and effort to develop numerous proposals. To date, none of these proposals has been received favorably either by the business community or by Congress in part because of the lack of supporting analysis.

Fourth, user fees are included as a cost of doing business and therefore included in deductible expenses reducing corporate income tax liabilities. Such reduction translates into reduced government revenues.

Fifth, for the business sector, the costs of additional record-keeping and other administrative requirements must be added to the fee itself. Even normally duty-free entries must undergo rigorous customs appraisal to "protect the revenues," an additional workload which would not be otherwise incurred. Similar record-keeping and administrative costs are borne by the Customs Service as well.

Taking into account the effects of direct administrative costs plus the indirect effects of the fee on income tax revenues, it is estimated that gross receipts in customs user fees are, in fact, reduced by at least 33 percent. This net revenue estimate is based on an analysis of 1983 import operations of a large U.S. manufacturer.

The U.S. Customs Service collected over $129 million from the user fee in Fiscal Year 1989, a total admittedly far in excess of the actual costs of "services" recognized by the GATT articles. Based on the estimate above, the costs of imposing the user fee is an estimated $230 million.

The Joint Industry Group submits that the Customs user fee:

- burdens the U.S. government with the need to defend a GATT-inconsistent practice during a critical period in international trade liberalization negotiations;
- burdens U.S. business and particularly U.S. manufacturers with unwarranted costs, thereby reducing net revenues;
- has not provided the basis for "improved" services thereby delivering no benefit to those paying the; and
- is not supported by analysis to demonstrate its relationship to the cost of processing of entries as required by GATT Article VIII.

For these reasons, the Joint Industry Group recommends that the customs user fee, known as the merchandise processing fee, not be extended beyond October 1, 1990. Rather, we strongly urge the Committee to repeal the provision in its entirety.

We appreciate very much the opportunity to present these views.

Prepared Statement of Richard E. Norton

My name is Richard E. Norton, Director of Facilitation for the Air Transport Association of America (ATA). ATA represents most of the scheduled airlines of the United States. These airlines provide regularly scheduled air service between the U.S. and more than 80 countries.

We appreciate this important opportunity to present ATA's views on the Customs Service's ability to provide adequate staffing for the inspection of passengers and cargo at international airports. The industry is concerned that the levels specified in the Administration's FY 1991 budget are likely to further aggravate serious congestion at these facilities, cause unnecessary disruptions for travelers, and make air travel in general less efficient.

Inspector Staffing at Airports. According to estimates provided by the U.S. Travel and Tourism Administration, the number of international passengers travelling by air to the United States has grown by over 40 percent since 1986. This growth is straining a Federal inspectional system that has been characterized by some as the least facilitative of any major nation.

The Customs Service has done as well as could be expected under these difficult circumstances, despite being held to the same personnel levels over the three year period. Under the aegis of their "Airport of the '90s" initiative, the Service has taken steps to computerize the admissions process, to separate flights into high risk/low risk categories, and to turn to a "profiling" technique for identifying potential violators.

Notwithstanding these innovations, Customs has been unable to keep pace with the demand to supply a sufficient number of officers for the major gateways to the U.S.—ports that have accounted for much of the growth cited above. It is exacerbated by the pressure to staff new international destinations, many of which have been opened or expanded in response to the congestion at larger airports. Customs must literally steal resources from one port to supply officers at another, creating a vicious circle that further downgrades services. The 1991 budget, which provides no net growth in positions. guarantees continued erosion of the agency's service and enforcement missions.

Alternate Sources of Funding. Ironically, this deterioration has occurred despite the existence of a funding mechanism that would go a long way toward resolving the staffing problem without having to increase appropriations. This mechanism is the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), which authorizes the collection of a $5 user fee from each passenger arriving from overseas destinations.

The COBRA legislation is clearly intended to serve as the means to provide the support that the air transport industry finds so lacking. Section 13031 (e)(1) of the law states unequivocally that "the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights at customs serviced airports when needed and at no cost . . . to airlines and airline passengers." Since this provision was conceived, air carriers have expressed concern to Congress that the revenues would have to be applied in the form of Customs staff increases if passengers were to receive "adequate" services. As noted above, this has not occurred. steps: first, clarify the original purpose of the legislation by adding language that stipulates the remaining $35 million be spent on Customs inspectors and equipment at the affected airports: and second, provide for an indefinite reauthorization of the account.

There is no doubt that these actions would have a dramatic impact: the sum could allow the hiring of up to 700 officers, or provide a mix of personnel and automation that will quickly reduce the scale of the problem. For the foreseeable future, Customs would be relieved from the impossible decisions required of them when resources simply do not exist for the task at hand.

Collection of Fees on Commercial Cargo Shipments. As you know, another fee was enacted shortly after the passenger fee was set up: the ad valorem charge for the processing of "formally entered" merchandise. In general, this system has not caused major problems for the air carriers; however, a GATT panel ruling has led to a number of efforts to revise the structure for the fees. ATA is concerned that the proposed alterations will lead to unrealistically high charges for certain services, and thereby discourage their use.

As recently as February 13, 1990, ATA has been informed by the Customs Service that the agency is recommending the adoption of either a modified ad valorem user fee schedule, or one that is transaction-based. In both cases, a $13 or $16 charge is to be levied on "informal" shipments, which account for over 30 percent of the volume and are typified by packages handled by express services.

We believe this new fee is too high in relation to the processing costs actually incurred by Customs. This is especially true in the case of those cooperating carriers who have developed systems to process high volumes of informal entries. As these systems serve to reduce Customs' costs as well, we find no rational basis for the fee level.

Without implying endorsement of the ad valorem fee schedule, ATA views the transaction-based alternative as even less desirable. Under this scheme, another "in-bond" fee of $4 to $9 would be added on top of the initial entry fee in cases where goods arrive in the U.S. at a major port and are moved to an interior distribution center for clearance and handling. Again using the example of the informal entry, Customs would receive between $17 and $25 for each package, despite huge shipments being cleared now through use of a single consolidated entry.

If revisions are made that include such unjustifiably high charges, it is likely that the fee structure will be found incompatible with the GATT again, and furthermore will severely restrict growth in the segments that suffer a disproportionate share of the burden. If Congress chooses to retain the fee system, ATA recommends that the charges be more closely aligned to the actual expenses incurred by Customs in processing each category of merchandise.

In conclusion, ATA asks that the committee give immediate attention to both of these matters; our suggested modifications to the user fees are critical to the healthy growth of the air transport industry, yet will not require any increase in appropriations. Additionally, the changes we have recommended will provide a tangible benefit to the travelling public, and serve to encourage growth in international trade and tourism.

Thank you, Mr. Chairman, for this opportunity to present our suggestions. We look forward to working with you to resolve the issues we have discussed today, and offer the assistance of ATA on these and other matters of interest to the committee.

Prepared Statement of M. Sigmund Shapiro

Mr. Chairman. It is a privilege for NCBFAA to appear here today. I am M. Sigmund Shapiro of Samuel Shapiro & Company, Inc. of Baltimore and serve as Chairman of the Association's Legislative Committee. The Committee and its staff have always been most gracious to NCBFAA and we thank you for your attentiveness to our point of view.

Customs brokers and ocean freight forwarders are at the very hub of our import and export commerce. We are unique in that we have a clear view of the flow of trade from the exporter's warehouse to the importer's front door, here and overseas. We see impediments to trade as threats to our industry's well-being and facilitation of the flow of cargo as our salvation. We support full and fair enforcement of all the laws that are on the books but oppose the regulatory barriers that are spawned by ignorance, bureaucracy or mischief. We are therefore highly pleased with the new look at Customs and the very positive influence of its new commissioner, Carol Hallett. She fully appreciates the "hard times" that the trading community have experienced and is trying hard to rectify the damage done. We, at NCBFAA, appreciate her efforts and are already committed to assist her in restoring confidence to the agency. We know that we will not agree on everything, but we do know that we will be able to actively engage in a mutually beneficial dialogue. Customs will make adjustments, and so will we.

Sir, you well know that Congress' role is not over, but in fact is just beginning. New legislation modernizing Customs and establishing greater protection for the law abiding citizen is being prepared and we know that you will have to devote your time and energy to those discussions. But, we expect this to be a dialogue without acrimony, where honest differences of opinion can be resolved and productive legislation can be evolved. As the Joint Industry Group testimony indicates, there is across-the-board interest from the business community and NCBFAA is a key player in these efforts. We are confident that, under your auspices, the process can move smoothly and that our views will be fully and fairly considered.

A more immediate problem before you, however, is resolution of the customs user fee issue. NCBFAA has worked with the Committee since the inception of the fee. It has always vexed the Committee and is equally troublesome to us. With you, we have tried to repair the international damage done by this blatant violation of the GATT code. We have also attempted to make the fee equitable to ALL parties, spreading the burden evenly and preventing the user fee from becoming an impediment, rather than a mere incidence of commerce. We have helped put patch after patch on this ill-conceived tax, and not baling wire, nor patches, nor the blessing of USTR can correct what was wrong in the first place—it is a tax; it violates GATT; it impedes trade; it should never have been passed.

While this indictment may seem harsh, NCBFAA has not come to this conclusion precipitously. Like you, Mr. Chairman, we have taken pains to offer constructive advice as to how to make the user fee workable. Yet, every change creates another trap. We believe that every proposal that we have seen—be it ad valorem, "modified" ad valorem, or transaction-based (and that includes Customs' latest offering)—poses serious obstacles to trade. NCBFAA has specifically commented on several occasions about how the user fee can become an artificial incentive for consolidation. Gaming the user fee can create as much damage to traditional patterns and practices of trade as avoiding taxes has often negatively influenced our economy and shattered public confidence in the Federal income tax system.

We customs brokers have been vocal in our adamant opposition to what we consider the most objectionable of the alternatives: the transaction-based fee. To impose a flat charge for each type of customs transaction creates a web of fees and administrative costs that further encumber trade and, more than any other remedy, makes it reasonable to alter existing practices which have otherwise proven efficient. To the extent possible, tariffs and taxes need to be a neutral force in the marketplace. A transaction-based user fee is at the opposite extreme.

There is a genuine consensus within the business community that this is the year to repeal the user fee. First, it has been delivered from the reconciliation process and now appears in a package whose only revenue aim need be the mini-trade bill's revenue neutrality. Further, the user fee has become such a source of public criticism that there exists a widespread question in the Congress about its value, measured against its corresponding political cost. And, it clearly impedes our negotiating position at the height of the Uruguay Round trade talks in Geneva. Our continuing violation of GATT principles undercuts our arguments for fair trade and only provides leverage to those seeking advantage from our embarrassment. In truth, the user fee is so overladen with problems that, like a vessel burdened with too great a load, it is ready to slip silently into the sea . . . if only you will encourage it to do so, Mr. Chairman and members of the Committee.

On a final note, NCBFAA believes that the Committee should take the opportunity provided by this first two-year authorization to establish fully adequate levels for commercial operations. We support the concept of a funding floor for commercial operations as recently suggested by Congressman Jake Pickle, Chairman of the Ways and Means Oversight Subcommittee. We also support increased staffing for the Office of Regulations and Rulings so that the public can have timely access to Customs' interpretations and so that we are in a position to comply with the law.

We believe strongly that additional resources must be given to the hiring and training of import specialists, again to facilitate compliance and (if appropriate) enforcement. It is very disturbing to us that import specialist staffing has actually declined over the past 15 years, while during the same period, formal entries tripled! Added to this, is the fact that inspector and criminal investigator staffing has risen dramatically. This reflects Customs' overzealous pursuit of enforcement objectives over the past decade at the expense of commercial operations. Mr. Chairman, we ask your committee to help reverse this trend by authorizing increased funding levels for import specialists.

And, finally, NCBFAA asks you to provide the Customs Service the resources necessary to complete its Automated Commercial System. We understand that substantial direction must be given Customs about the application of these resources. NCBFAA asks that your guidance include the direction that existing subsystems, like the Automated Broker Interface (ABI) must be fully developed and resourced before entering new and highly conceptual enhancements. Brokers have invested heavily in ACS and we strongly believe that Customs should feel a strong sense of obligation to industry to ensure that there is a corresponding return on that investment, before the Service attempts to conquer new frontiers.

Again, Mr. Chairman, thank you. NCBFAA is pleased to have this opportunity to testify.

PREPARED STATEMENT OF SENATOR STEVE SYMMS

I am concerned with the petroleum industry's inability to obtain drawback on the export of drawback-eligible product, which has been caused by the issuance of Customs Service Directive 88-1.

As a result, I have introduced a bill, S. 1648, which will cure this problem. I intend to pursue adoption of this legislation at the first opportunity.

I encourage the petroleum industry and the Customs Service to pursue a resolution of this issue that will enable the Customs Service to ensure drawback is being claimed only on the export of drawback-eligible refined products while at the same time the petroleum industry can be assured that the procedures are not so complicated as to make compliance impossible or impracticable.

I hope that my bill, S. 1648, will be incorporated and considered as part of any tariff legislation this year.

PREPARED STATEMENT OF ROBERT M. TOBIAS

Mr. Chairman and Members of the Committee: I am Robert M. Tobias, National President of the National Treasury Employees Union NTEU is the exclusive representative of over 144,000 Federal workers, including all employees of the U.S. Customs Service worldwide. I am accompanied by Patrick Smith, NTEU Director of Legislation, and Paul Suplizio, legislative consultant. On behalf of the men and women who enforce our trade laws and are in the front line of the war on drugs, I am pleased to present NTEU's views on the U.S. Customs Service authorization for FY 1991 and FY 1992.

Customs remains an agency in deep crises. We have recent confirmation of this in the report of a two-year investigation conducted by the Oversight Subcommittee of the House Ways and Means Committee. We called for this investigation, and its results were as we anticipated. Nevertheless, it is a sad day for Customs, and for the dedicated men and women of the Service. We spoke up repeatedly in an effort to head off many of the problems, but sadly, Customs management was not in a mood to listen. The biggest lesson of the past several years is that Customs employees and the trade community have ideas worth listening to.

CONGRESS SHOULD SET STANDARDS AND REQUIRE A LONG-RANGE PLAN

Let me address, first, the question of a two-year budget authorization for Customs. We favor such an approach, but only under conditions that would make it meaningful. The President's budget is prepared in one-year increments, and unless Congress acts to spell out its priorities, there is nothing to prevent OMB from disregarding congressional intent and submitting a budget that accords with its own priorities. A two-year authorization would be meaningless if it's simply a set of numbers that OMB can disregard. Congress must legislate to ensure that the priorities built into its two-year authorization will not be disregarded.

Congress can do so by enacting specific standards of service that Customs must meet, for example, that air passengers be cleared within 45 minutes of arrival, that 8 percent of containerized shipments be inspected, that no more than 35 percent of formal entries be bypassed, that 20 percent of Import Specialist staff-years be allocated to importer visits and assisting the trade community, and so forth. This is not micro-managing, but a way to set priorities and ensure that Customs requests the necessary resources to achieve them.

A good example is the Packwood amendment that established the "binding ruling" program. This started with the unhappiness of the Port of Portland with the lack of uniformity in Import Specialist classification decisions, which encouraged port-shopping to obtain more lenient treatment. Under the law, Customs is now required to ensure a binding ruling within 30 days. The law coincided with an explosion of classification requests under the Harmonized Code. As a result, Customs has had to hire twenty more attorneys and deputize senior Import Specialists nationwide to write binding rulings. Customs is still behind in issuing rulings, but one thing is certain, the 30-day standard is driving the action.

NTEU has long called for additional Inspectors at the nation's airports, to assure effective enforcement while processing passengers efficiently. The 45-minute standard called for by the airline industry, if enacted into law, would enable Customs to calculate the number of Inspectors needed to meet the current and forecast needs of each port. The standard would guide resource planning for this function, and strengthen Customs' hand in obtaining the necessary resources from OMB. We do not always agree with the airline industry on which system of air passenger clearance is most effective. We support a system that not only facilitates processing, but maintains enforcement effectiveness. But whatever system is used, it should be adequately staffed to conduct proper checks while speeding passengers on their way.

For a two-year authorization to be meaningful, it should be a component of a long-range plan. We believe this Committee should start by requiring preparation of a five-year plan for commercial operations. In the past, the General Accounting Office has suggested a format whereby an agency would advise Congress how it would utilize additional increments of resources, and what the additional benefits would be. Adapting this idea, a Customs commercial operations plan should relate the principal non-narcotics functions—revenue collection, entry processing, cargo inspection, passenger processing, commercial fraud enforcement, and voluntary compliance activities—to a forecast of the workload five years in advance, and how additional increments of resources should be deployed to handle the workload. Such a plan would broadly portray Customs' resource allocation to principal missions and anticipated results. We have attached to our statement (Appendix A) model bill language to require annual submission of such a plan. We believe it would be invaluable to congressional oversight committees in their review of Customs' budgets. The plan is limited to commercial operations because we believe narcotics interdiction tasks should respond to priorities established by the "drug czar."

Standard-setting and a long range plan will work for a one-year authorization, but are a must if a two-year authorization is to work. The reason is that, in order to calculate the second-year authorization, assumptions must be made about workload growth, program priorities, and changes as new conditions arise. Inflation must also be taken into account, and the dollar amount needed "to maintain current service levels" must be built into the baseline forecast for the second year. CBO is the expert on this, and has published its procedure. The question is not whether a two-year authorization figure can be calculated, but whether OMB will pay attention to it. Congress should consider mandating a two-year budget cycle for Customs, that is, a single figure for both authorization and appropriations, covering a two-year period. Under congressional oversight, Customs could then deploy the resources provided without the uncertainty of OMB's annual cutbacks.

CUSTOMS FUNDING SHOULD BE INCREASED

For FY 1991, NTEU recommends an authorization of $1.2 billion and 17,978 full-time equivalent positions (FTE) for Customs salaries and expenses. This is an increase of $97 million and 1,629 FTE above the President's budget request for FY 1991. For FY 1992, NTEU recommends an authorization of $1.3 billion and 18,978 FTE—an increase of $119 million and 1,000 FTE above our FY 1991 recommended level. A comparison with the President's FY 1991 request is shown in Table 1. Note that $54.7 million is an inflation adjustment for FY 1992. That is, if Congress desired to maintain the same number of FTE and service levels as FY 1991, $54.7 million would need to be added to the 1991 level.

I would like to explain the basis for NTEU's recommendations, starting with the current fiscal year. For FY 1990, Congress enacted a level of 17,106 FTE for Customs, including 16,976 FTE in regular appropriation and 130 FTE in the drug bill. Program additions were 435 FTE for cargo container inspections, 149 FTE for air program staff, and 100 FTE for a new Financial Crimes Enforcement Network to investigate money laundering. All of these activities were drug war related; there were no enhancements for commercial operations. The sequester reduced Customs' funding by $15 million, and pay absorptions cost another $25 million, yielding a shortfall of $40 million and 443 FTE. Consequently, Customs cut back on implementing the new programs for FY 1990, and also reduced Investigations staff. To fully fund these programs in *FY 1991,* NTEU adds $40 million and 443 FTE to the President's FY 1991 budget request. This is shown in Table 2. By adding this amount, NTEU is not restoring the funds sequestered in FY 1990, it is simply making sure that the sequester does not continue into FY 1991. We also assure the new programs Congress authorized for FY 1990 are carried forward into FY 1991 without having to cut Investigations staff to pay for them.

Moreover, the President's budget for FY 1991 imposed a further reduction of $27.5 million and 636 FTE for pay absorptions and A-76 studies, making a total reduction of $68 million and nearly 1,100 FTE over the two years FY 1990 and FY 1991. This marks a new OMB policy of carrying an absorption imposed in one year into the next year, thus cumulating the absorption. (Past practice was that pay costs required to be absorbed in one year were usually funded in the next). For A-76 studies, which aim to achieve staff savings by contracting out certain work such as data entry, the budget cut—in this case $831,000 and 98 FTE—is computed by OMB and arbitrarily imposed, whether or not Customs actually undertakes to contract out.

In order to prevent the loss of 1,100 positions while fully funding the President's FY 1991 budget, NTEU adds $27.5 million and 636 FTE to the request, in addition to the $40 million and 443 FTE already mentioned. This amount, totaling $67.5 million and 1,079 FTE, is needed just to keep Customs even with the level approved by Congress for FY 1990. It makes little difference whether OMB wields its axe overtly or by absorption, the effect is the same. To propose reducing Customs by 1,100 positions in the face of mounting evidence of the Service's incapacity to enforce our most fundamental trade protections—the antidumping and countervailing duty laws—and letting 96 percent of cargo containers enter without inspection, is a highly irresponsible act.

After restoring these 1,100 positions, NTEU recommends a program increase of $29 million and 550 FTE for 300 additional Inspectors and 250 Import Specialists for commercial operations for FY 1991. The President's budget contains 175 new Inspector positions for enforcement on the Southwest border. NTEU would complement these by providing 100 new Inspectors for passenger and cargo clearance at the nation's airports, 100 for cargo clearance at northern border ports in light of increased traffic anticipated under the U.S.-Canada Free Trade Agreement, and 100 to raise the level of inspection of containerized shipments to 6 percent. The 250 Import Specialists are required to process additional entry workload, improve enforcement of antidumping and countervailing duty laws, and expand visits to importers' premises and responsiveness to trade queries in order to stimulate a higher degree of voluntary compliance with the customs laws. The rationale for these positions will be developed more fully in the remainder of our statement.

Table 1 shows that, for FY 1992, NTEU recommends authorization of 1,000 FTE above the current services level. NTEU would add 200 Inspectors and 100 Investigators/Patrol Officers to strengthen Customs' efforts in the drug war, 50 Special Agents to strengthen investigation of commercial fraud, and 650 FTE for commercial operations. Of these 650 positions, 300 would be for Import Specialists to handle workload growth, reduce bypass, and permit 13 percent of Import Specialist staff-years to be utilized to increase accessibility to the trade, and 350 would be for Inspectors to add another 100 positions at our airports, raise the level of cargo container inspection to 8 percent, and assign 50 Inspectors to increase enforcement at bonded warehouses and in foreign trade zones. The rationale for these positions will be developed fully in the remainder of our statement.

Table 3 shows the number of Inspectors, Import Specialists, Patrol Officers, and Special Agents that would be authorized if the Committee approves our recommendations for FY 1991 and FY 1992. In sum, by FY 1992 under NTEU's program the number of Inspectors would increase by almost 1,000 over the FY 1990 level; the number of Import Specialists would increase by 600 over the same period; the number of Patrol Officers by more than 300; and the number of Special Agents by 50 over the current level.

Tables 4 and 5 show that while Congress has provided 3,647 additional positions in recent years, less than half have been assigned to commercial operations and most, of necessity, have been allocated to the drug war. All told, commercial operations staff increased by 1,651 FTE, and drug war staff increased by 1,996 FTE between FY 1986 and FY 1989. Only 15 percent of the total increase for those years went to line tariff and trade positions, namely Import Specialists, entry clerks, and laboratory employees. Table 5 shows that the increase in commercial operations was entirely offset by workload growth. While commercial operations staff increased 19 percent between FY 1986 and FY 1989—the first significant increase in a decade—the number of formal entries increased percent. Over the entire decade, formal entries more than doubled, while commercial operations staff increased ten percent.

USER FEES SHOULD BE AVAILABLE WITHOUT APPROPRIATION

Customs user fees for processing passengers and conveyances, and the ad valorem merchandise processing fee, expire this September 30th. NTEU takes no position on renewal of these fees, believing that to be a matter between Congress and the affected interests. However, our position is that, as long as Congress imposes these fees on the users of Customs' services, they should be available without appropriation or apportionment to fund the services the trade community requires. Currently, only the passenger and conveyance fees are available to Customs in this manner. Collections from these fees will amount to $149 million in FY 1990, while collections from the merchandise processing fee will amount to $749 million.

The merchandise processing fee is subject to annual appropriations, and this year $608 million will be used to fund commercial operations, leaving an excess of $141 million that is not being used to fund the needs of the trade. Congress has before it longstanding pleas from the nation's busiest air and seaports for additional Inspectors and Import Specialists. To give an example, the ports of Los Angeles and Long Beach have forecast an increase in tonnage through these ports by 50 percent—from 70 million to 103 million metric tons—between now and the year 2000. "Large container ships are replacing massive warehouses. Cargo arrives just in time for a sale at the department store, or for use in an assembly line at a manufacturing facility. Efficient cargo clearance in a timely manner is a must," according to a port spokesman. With access to the merchandise processing fee, Customs could start planning to meet the needs of our ports in an orderly way as trade grows, instead of the current process of reacting to emergencies and rushing hither and yon to put out fires. We believe that Congress should grant Customs standing authority to draw from the merchandise processing fee to respond to these requirements. NTEU is pleased to report that, at long last, OMB has agreed to submit legislation to grant such authority. We urge the Committee to advise OMB to speed up the process, so their proposed amendments may be considered with user fee legislation this year.

At the same time, Congress should remedy two important and longstanding problems with the merchandise processing fee, namely, Treasury's unwillingness to allow the excess balance at the end of the year to be carried over to future years, and the fee's being subject to sequester under the Gramm-Rudman Act. Congress should assure that each year's excess of expenditures over collections since FY 1988, when the first excess occurred, is carried over and remains available to improve commercial services. Carryovers for fiscal years FY 1988–1990 will amount to $375 million, which is currently being used to reduce the Federal deficit. This is inappropriate in view of the needs of our ports for additional Customs resources; it is also contrary to U.S. obligations under the General Agreement for Tariffs and Trade (GATT). Finally, it is irrational to sequester outlays from the user fee account, because funds from that account are earmarked to provide specific commercial services paid for by the public. Sequestering these funds denies to the public the services they have paid for. In FY 1990, $8.6 million—more than half the Customs total sequester—was cut in this way. We urge Congress to correct these problems by enacting legislation to make the merchandise processing fee available to Customs without appropriation or apportionment, to require carryover of any excess to future years, and to exclude outlays from user fees from automatic budget cuts under Gramm-Rudman.

MORE IMPORT SPECIALISTS NEEDED FOR TRADE LAW ENFORCEMENT

The most basic of our trade protections are the anti-dumping and countervailing duty laws, and in recent years U.S. industry has increasingly turned to these laws for relief from unfair trade practices. Table 6 shows how anti-dumping and countervailing duties have grown in recent years. While still only a small percentage of total duties, anti-dumping and countervailing duties increased 562 percent between 1984 and 1989. The number of anti-dumping entries increased 200 percent since 1984, and nearly doubled in 1989 alone.

Both laws provide relief in the form of additional duties on unfairly priced imports. Dumping duties are imposed when sales of imported goods in the U.S. market are below the cost of production or cost in the home market. Countervailing duties are imposed to offset foreign government subsidies to their producers. The Commerce Department, upon petition by U.S. industry, computes the extra duties to be imposed on the imports of each foreign manufacturer, if the International Trade Commission has found injury to U.S. industry in the case. To illustrate, in a recent case brought by AT&T, dumping duties were imposed by Commerce on more than a billion dollars a year on imports of small business telephone systems from Japan and Taiwan. Dumping duties of 179 percent, 136 percent, and 129 percent were imposed on foreign manufacturers Matsushita, Toshiba, and Nitsuko respectively. Customs' job is to review the entries of these firms, collect the duties, and guard against circumvention.

The principal methods of circumvention are misclassification, misdescription, and transshipment through third countries to conceal country of origin. According to a recent GAO report (GGD 89-124) Customs has neither an adequate system for monitoring AD/CVD entries to determine if Commerce's orders are being properly enforced, or an enforcement program to guard against circumvention. Customs' current monitoring system, which is based on blue-lining a hard copy of the entry, has resulted in boxes stacked to the ceiling at Customs headquarters, and a 30 percent error rate. Customs is working on a system to detect transshipment, but in the meantime its principal enforcement technique is to react to industry reports that goods continue to be sold in the marketplace at unfair prices. last year, the brass industry testified that, despite eleven anti-dumping and three countervailing duty orders on imports of brass sheet and strip, there existed "a virtual absence of measures by the agencies to guard against fraudulent circumvention and to ensure that all duties owed are, in fact, forthcoming." Both the brass industry, and before it the specialty steel industry, have urged that because there are several grades of alloys, misclassification and misdescription are obviously and likely methods of circumvention, given the climate of lax enforcement.

The root of this problem is the growing number of entries relative to the number of Import Specialists. Table 5 shows that formal entries are projected to grow from 9.3 million today to 10.2 million in 1992. Between 1989 and 1992 entries increase 14 percent, while commercial operations staff will increase 9 percent if NTEU's recommendations are adopted. A sufficient number of Import Specialists is required to give special enforcement attention to AD/CVD entries and look for evidence of circumvention. Under the entry summary selectivity (ESS) module of the Automated Commercial System (ACS), entries that are misclassified may not hit against a criterion for Import Specialist review. The entry will be bypassed, and ultimately accepted as entered. With a 50 percent bypass rate, the corps of Import Specialists is barely able to handle processing all the trade sensitive entries requiring attention (Table 7). Additional Import Specialists are required to override bypass criteria and examine entries in similar classifications, and other entries from the same manufacturer, to uncover efforts to avoid payment of anti-dumping and countervailing duties. Suspect shipments can be designated for inspection, and evidence of fraud referred to Investigations. The action begins with Import Specialists, and there must be enough of them to make the necessary enforcement checks. A post-audit approach will not work because the damage to industry will be done if the goods enter the marketplace.

How many more Import Specialists are needed? This depends on the universe of sensitive trade program entries requiring Import Specialist attention. They include anti-dumping and countervailing duties, goods under quota or restraint agreement, "other agency" entries such as food imports monitored for FDA, and generalized system of preferences. The list should also include entries involving patent and copyright recordations and ITC exclusion orders enforced by Customs to protect intellectual property rights. When GAO examined this issue in 1986, 65 percent of firms surveyed said counterfeit and infringing goods covered by exclusion orders continued to enter the country. Entry review to enforce intellectual property safeguards imposes an additional requirement for Import Specialists.

Table 7 shows the number of trade program entries more than doubled between 1982 and 1989, while the number of Import Specialists remained static at 1100. In FY 1989, both the number of trade program entries and the total number of entries processed by Import Specialists were 4.5 million. Based upon the projected increase in formal entries to 10.2 million by 1992, NTEU calculates that 1,400 Import Specialists are required to handle this workload growth while still bypassing 50 percent of all entries. It is our view that the bypass rate is too high and does not adequately protect the revenue. We believe the bypass rate should be set at no more than 35 percent, which is the rate all districts were able to achieve through sensible local criteria within two years after Customs established bypass in June, 1981. The current ESS criterion to bypass entries valued under $1 million is giving away the store. To the 300 Import Specialists required to handle workload growth between now and 1992, we would add 100 staff-years to begin reducing the bypass rate, and 100 to improve enforcement of AD/CVD, intellectual property, and other trade laws. A final increment of 200 staff-years would be added in FY 1992 to allow Import Specialists to devote 13 percent of their time to visits to importers' premises, greater responsiveness to requests for assistance in answering trade law questions, and similar voluntary compliance stimulating activities. This year, Customs will collect more than $19 billion in revenue, so each percentage increase in voluntary compliance will return $190 million. NTEU has long urged that Import Specialists be given the computers, access to automated data bases, and other tools needed to get out from behind mountains of paperwork and assist the majority of importers who are honest and want to comply with the law. Our proposals will allow this to begin. At the same time, additional help will have a salutary effect on the morale of this overworked group, provide increased opportunities to develop commodity expertise, and hopefully stem the departure of these valuable individuals to the private sector.

The Import Specialist position should also be upgraded by increasing the journeyman level from GS-11 to GS-12, and increasing the grade of Import Specialist Team Leaders from GS-12 to GS-13. An adequate career ladder to attract talented people to this important career field has been a longstanding need. Capping senior Import Specialists at grade 12 fails to recognize the invaluable expertise of these individuals and encourage their specialization in trade law and industrial practice for the nation's benefit. More research requirements and more responsibilities for management and coordination rest upon journeyman Import Specialists, who are required to interpret and apply a wealth of highly complex classification and valuation laws and regulations. Team leaders are assuming even larger roles regarding team work flow, training, and management. These grade advances are fully warranted, and are essential to encourage careers and improve retention of these critical employees.

MORE INSPECTORS AND IMPROVEMENTS IN ACS SELECTIVITY NEEDED FOR CARGO PROCESSING

According to Customs' estimate of the commercial fraud threat for FY 1990, $14 billion in merchandise will enter the country in violation of our trade laws. Another $25 billion in unreported goods could be entering undetected in containers that are not inspected. An NTEU study has estimated that illegal imports are costing this nation $3 billion in lost duties, $19 billion in lost national output, nearly a half million jobs lost, and $2 billion in lost Federal taxes due to lower employment and GNP. In addition, thousands of tons of illegal narcotics are smuggled in commercial shipments, and Customs has identified concealment within containers as a primary threat. All told, no more than 10 percent of the heroin and marijuana, and a third of the cocaine, destined for these shores is seized. Inspection of commercial cargo is thus critical for both trade law and narcotics enforcement.

Customs makes about two million inspections a year and releases around 20 million shipments, for an inspection rate of about 10 percent. The rate varies by location; for example, at JFK airport it is around 7.5 percent. Only 4 percent of the 4 million containers that enter each year are currently inspected, according to Customs. Table 8 shows the number of container inspections has declined steadily from 7 percent in 1980 to 4 percent today, as the number of containers rose 46 percent while the number of Inspectors rose 21 percent. Table 8 also shows the number of merchandise seizures associated with cargo processing. These seizures show a marked downtrend of late, falling from 40,000 in 1987 to 22,000 in 1989. Customs has frequently pointed to seizures as evidence of enforcement effectiveness, but NTEU has pointed out that the true test is in the marketplace. If infringing goods continue to be marketed here in large quantities, clearly enforcement effectiveness is inadequate. Several manufacturers of name-brand jeans, athletic shoes, and computers have turned to sell-help to locate and remove from the market counterfeit goods that have somehow eluded Customs. The low inspection rate and Customs' inability to identity high-risk shipments using its computerized system for selecting shipments for inspection, Own as ACS selectivity, creates a climate of lax enforcement which encourages commercial fraud.

NTEU understands that the Committee is undertaking a separate investigation of the ACS system, so our remarks today will be limited to those aspects of the system that bear on the requirement for additional staff Several GAO studies, and a recent report on ACS enforcement results prepared by Customs for the House Ways and Means Committee, support three principal conclusions. First, ACS selectivity has not markedly improved enforcement effectiveness. The most recent report for 1988 shows computer-generated inspections uncovered no discrepancies in more than 96 percent of nearly 12 million shipments. The low 3.6 percent rate shows that ACS cannot be a panacea for saving staff. In the most recent GAO report (IMTEC 89-59), covering FY 1988 and the first quarter of 1989, Inspector overrides of the ACS system (deciding to inspect a shipment when the computer indicates release without exam) yielded a higher discrepancy rate than any other method of selection. GAO has pointed out in two studies (GGD 86-136 and IMTEC 89-4BR) that Customs has retrieved virtually no useful data from inspections it performs that would enable it to profile high-risk shipments. In fact, examination history files now in the computer contain false and inaccurate data. A recent Intelligence Report that looked at the five largest drug seizures in the New York region—all of them involving containers—found that ACS played no role in these actions.

Second, both NTEU and GAO have pointed out that the ACS design introduces many inefficiencies into the inspectional process. Inspectors spend a good part of their time preparing data for computer entry. Oftentimes, there are simply not enough terminals available at each facility, and at many locations terminals are miles from the examination site. As day-to-day problems with the system occur, they are resolved on a case-by-case basis. The next time the problem occurs, it has to be corrected the same way, because Customs has not changed its operating procedure. Because of the press of work, Inspectors cannot always post inspection results on time. As of February 1988, there were 15,000 unresolved entries in the computer due to unposted inspection results. At one port, Inspectors said they could have conducted the examination, but documentation was lost and they could not recall the results. They then spent time fixing the computer by overriding the examination messages. In instances where the computer would not allow an override, some Inspectors reported false examination results. These inefficiencies show that ACS is a long way from yielding productivity improvements in cargo processing that would allow a saving in staff.

Third, ACS has disrupted the backbone of Customs enforcement, the Inspector-Import Specialist team. In the past, Import Specialists and Inspectors would communicate freely. Inspectors would give Import Specialists valuable information to assist in classing and appraising an entry, based on their physical examination of the merchandise. Import Specialists, as commodity experts, would advise Inspectors what to look for in an inspection, or would join in the inspection. Through this teamwork, the strengths of each professional were brought to bear on enforcement. ACS has largely broken down this teamwork and free flow of communication. Import Specialists and Inspectors now review entries and examine shipments selected by the computer. NTEU strongly supports automation as a tool to aid employees in applying professional judgment, and we support a redesigned ACS. Lately, Customs appears to be responding to our concerns. Until ACS is redesigned to restore the Inspector-Import Specialist team as the backbone of enforcement, the best investment Customs can make is to increase the number of these professionals because they will be the mainstay of the future.

Last year, Congress approved 435 additional Inspectors for cargo container exams. Because of sequester, this program was deferred, but under NTEU's proposal it would be implemented in FY 1991. Customs states that 137 containers can be examined for each additional staff-year. Thus, the rate of container inspection should rise from 4 to 5 percent in FY 1991. In our view, this level is still inadequate and an 8 percent inspection rate should be set as a target. Consequently, we would add 100 more Inspectors in FY 1991 and 200 more in FY 1992 for container inspections.

We continue to be concerned about Customs' ability to handle the additional commercial traffic anticipated on our northern border as a result of the U.S.-Canada Free Trade Agreement. Canada could become a transshipment point for third countries seeking easy access to the U.S. market, and to prevent this our northern ports should be reinforced with 100 additional Inspectors in FY 1991. The President's budget provides 175 Inspectors to staff our ports in the southwest, and we support this proposal. We also urge Congress to expedite funds for improvements required at land border ports to relieve congestion and reduce air pollution, which continues at toxic levels at some border crossings.

NTEU continues to be concerned about the adequacy of the audit/inspection approach to enforcement in bonded warehouses and Foreign Trade Zones. When Customs changed from having on-site Inspectors to primary reliance on audits and spot-check inspections, it greatly reduced the number of staff-years for enforcement at these entities. NTEU remains convinced this was a mistake and an invitation to abuse. About 40 percent of all imported cargo is shipped in-bond. A large quantity of imports destined for the U.S. market likewise passes through Foreign Trade Zones. The *Unfair Trade Practices* hearings held in 1986 uncovered evidence of abuse, yet Customs continues to give a low priority to enforcement. Under our plan, 50 new Inspector positions would be authorized for this purpose in FY 1992.

Customs Inspectors and Patrol Officers are saddled with obsolete grade classifications that fail to recognize the increased technical complexity of Customs work and are contributing to high turnover and declining skill levels in these jobs. Congress should act promptly to raise the journeyman grade for Inspectors and Patrol Officers from GS-9 to GS-11, with appropriate higher grades for positions in these career fields with higher skills and responsibilities. The lack of an attractive career ladder makes it difficult to attract talented people to these arduous occupations. The world has changed from the steamship era when only a few commodities moved in trade. Goods today are highly diverse, entry and release are automated to permit the orderly transit of large volumes of merchandise, and Customs employees must apply sophisticated techniques to discover contraband and identity non-compliant importers. Raising the journeyman grade level to GS-11 would recognize these new conditions while encouraging young people to make a career in the Service.

Nothing would go farther to improve recruitment and retention of Inspectors than to ensure this physically demanding and hazardous occupation is staffed with a young and vigorous workforce. The job of controlling the nation's borders requires individuals with stamina who are armed and trained to encounter escaped felons, drug smugglers, and terrorists. Customs Inspectors and Canine Enforcement Officers have been stabbed, shot at, run over, and killed in line of duty. They carry weapons for sell-protection in making arrests and physically subduing those who resist. They are assigned to isolated locations and must operate alone on night shifts. Experience has shown that the best way to make such careers attractive while rejuvenating the work force is to provide for retirement at age 50 with twenty years of service. NTEU supports legislation introduced by Congressman Al Swift (H.R. 1083) and Senator Barbara Mikulski (S. 513) to provide 20-year retirement for Customs Inspectors and Canine Enforcement Officers, and we urge the Committee to support this legislation. Our Inspector force is greying and only a small percentage of younger Inspectors are staying after five years. If we do nothing, the corps of Customs Inspectors will be comprised of young, inexperienced recruits and older Inspectors without the requisite stamina for the job. The only solution to maintaining an adequate number of experienced officers and a vigorous work force in these critical occupations is to provide for retirement after twenty years.

ADDITIONAL INSPECTORS ARE NEEDED AT AIRPORTS

Last year, Customs launched the first phase of its new strategy for air passenger processing in the 1990's. Pilot programs were established at Los Angeles, San Francisco, Miami and Chicago, with full implementation nationwide scheduled for the next three years. The basic idea of the new strategy is to identity high and low risk flights and passengers using advanced techniques, such as automated lookout lists, machine-readable passports, and analysis of passenger manifests provided by airlines. It is essentially a one-stop system, where the passenger undergoes primary inspection by a Customs or INS Inspector equipped with a passport reader and terminal access to the joint lookout system the two services are developing. After completing primary inspection, low risk passengers will be able to retrieve their luggage and depart. This is done under the scrutiny of roving Inspectors controlled by a rover command center. Rovers are to be trained in the most advanced techniques to spot high-risk suspects. Their efforts are supplemented by passenger analysis units who's job is to profile high-risk flights and passengers, and develop advance intelligence from passenger lists and information from worldwide law enforcement agencies.

NTEU has serious misgivings about this new system because, while many of its concepts sound good, they are a long way from fruition. The basic force driving the system is the logistical nightmare of processing, with antiquated facilities at many airports, a passenger population that will double between now and the year 2000. Unless the new strategy is fully implemented with the necessary resources including additional staff, it could serve as a facade for speeding passenger clearance with little or no enforcement. Our experience with Red-Green and other Customs' ventures into "selectivity" give little cause for comfort in this regard.

Table 9 shows that, contrary to the notion that Customs is detaining large numbers of passengers, only about 11 percent of air passengers are being referred for secondary (more intensive) examination, and this figure has been declining in recent years. The bulk of the passenger's time is spent waiting in line for primary inspection, and the bottleneck in most cases is the lack of staff to man all primary lanes.

NTEU firmly supports one-stop passenger processing, and we believe primary inspections should be consolidated in a single service, namely Customs. We also support an adequately manned rover force and secondary. As these functions today are seldom staffed properly for enforcement, we wonder when and whether Customs will summon up the will to demand the resources from OMB to make its latest blueprint a reality.

According to the Air Transport Association and Airport Operators Council, additional Inspectors are required at our airports right now. NTEU's proposal responds to this need by providing 100 Inspectors in FY 1991 and another 100 in FY 1992. If Customs truly intends to develop a modern passenger clearance system that utilizes the latest enforcement techniques, it will have our full support. But to start, it should join us in getting these 200 Inspectors that the airports say they need into position as soon as possible.

INSPECTOR OVERTIME COMPENSATES FOR STAFF SHORTAGES

Inspectional overtime is a critical resource for meeting Customs' growing demands for clearance of passengers and cargo. For nearly a decade, a virtually static inspectional force has had to process a growing number of air travelers and cargo shipments. With its workforce limited by OMB personnel ceilings, Customs inspectional overtime has expanded to fill the gap between workload and resources.

The amount of inspectional overtime is driven by the carriers' demand for inspectional services outside the normal duty hours of the port. Customs is reimbursed for the cost of such services from the Customs User Fee Account. Since overtime costs are now borne by all carriers rather than the individual carrier requesting service, we anticipate that demand for overtime services will rise as individual carriers request services that they are no longer billed for.

An Inspector with overtime earnings of $15,000-$20,000 a year works an average of 62 hours a week, 52 weeks a year. A 1981 Customs study of overtime showed that, in addition to a normal 40-hour week, the average Inspector is required to work three of every four Sundays, one Saturday per month, and seven week-day overtime assignments per month. For Inspectors to make themselves available such long hours, particularly on Sundays and holidays when other citizens are tailing the day off, adequate monetary incentive must be provided. The most recent data collected by Customs shows that Inspectors are earning, on average, 2.1 times the regular rate of pay on Sundays and 2.4 times the regular rate on the other days of the week. Customs' study attributes the 2.4 rate of pay to the call-back of Inspectors who have left the worksite. Call-backs frequently occur at night and at irregular hours. The Customs study also showed that *the average Inspector works 7 hours on each Sunday assignment*, and an average of 8 hours if holidays are included in this figure.

We are convinced that the frequent call-backs, the late-night hours, and the physically demanding nature of inspectional duties justifies the present rate of pay. Moreover, these rates of pay conform with the prevailing overtime rates in the private sector, which normally establishes double time premiums for call-back and night work, and where typical practice is triple time for Sunday overtime and double time and one-half for holiday work. These facts were established in the OPM Premium Pay Study conducted in 1983.

The current $25,000 cap on overtime earnings has not been changed for five years and many Inspectors at larger airports and the Southwest border are beginning to "cap out" in the fourth quarter of the year. A total of 961 Inspectors were near to exceeding the cap in 1988, compared to 266 in 1985. Because higher-graded, more experienced employees cap out earlier in the year, the Inspectors working overtime are less experienced and less able to handle unusual occurrences. For example, on Sunday, September 25, 1988 the Miami inspector staff working overtime included 27 temporaries and 8 trainees out of 53 assigned. This compares to only two such lower-graded personnel assigned on a typical Sunday four months earlier. Many Southwest border ports, such as Port Arthur, El Paso, Houston, Freeport and Corpus Christi are having a difficult time due to the number of Inspectors capping out. To avoid these problems, we believe the cap should be promptly raised or indexed for inflation.

In closing, I would like to note that on February 22nd, 1988 an Inspector in Chicago made the largest hashish seizure ever—2,743 pounds—concealed in wooden crates in a container carrying furniture shipped from Bombay, India. The container was discharged in long Beach and shipped in-bond to Chicago by rail. This U.S. Customs Inspector overrode a computer-selected general examination to make this seizure.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions.

APPENDIX A.—PROPOSED BILL LANGUAGE—CUSTOMS COMMERCIAL OPERATIONS FIVE-YEAR PLAN

The Secretary of the Treasury shall, in order to ensure proper allocation of Customs resources for trade law enforcement, revenue collection and other purposes, submit annually to Congress at the time of submission of the Department's budget, a U.S. Customs five-year plan for commercial operations aimed at systematically increasing the levels of compliance with the Customs laws, halting the flow of imports illegally entering this country, improving services to the business community, and protecting the revenue. The first plan should be submitted to the Committee on Ways and Means and Committee on Finance not later than February 1, 1991 and should cover the period FY 1992 through FY 1996. Thereafter, the plan should be revised annually and submitted with the budget justification for each fiscal year. In addition to projections for the five-year period, commencing with the fiscal year of the current budget request, data shall be provided for a base year or base period which shall be the most recent year or period for which comparable data is available for the matter presented. The plan will contain, as a minimum, the following information for each fiscal year included:

a. a forecast of the commercial fraud threat to the U.S. in terms of estimated values of illegal imports of counterfeit goods, unreported goods that enter undetected, goods entering in violation of specific trade agreements, such as steel, textiles and apparel, and other illegal imports;

b. a projection of trends in total revenue collections, anti-dumping and countervailing duties, other revenue incidental to trade law enforcement, and accounts receivable;

c. a projection of the total number of commercial cargo and containerized shipments, inspections of commercial cargo and containerized shipments, discrepancy rates resulting from inspections, and inspector staff-years allocated to commercial cargo and container inspections;

d. a projection of entry workload for formal, informal, trade program, and dutiable entries; the number and types of entries to be renewed by Import Specialists, and the number with errors; the percent bypassed; additional revenue collected from Import Specialist review of entries, the number of commercial fraud referrals by Import Specialists; and number of Import Specialist staff-years;

e. the number of Import Specialist visits with Importers and others, the number of responses to requests for information and assistance, and the total number of Import Specialist staff-years allocated to information, visits, and similar voluntary compliance stimulating activities;

f. a projection of total staff-years allocated to commercial fraud enforcement, broken out by Inspectors, Import Specialists, and Investigators; the number of commercial fraud leads generated, the number followed-up, and the number of commercial fraud cases open in Investigations;

g. a projection of the number of patent and copyright recordations and exclusion orders filed, and the number of enforcement actions to enforce intellectual property rights;

h. a projection of the number of requests for classification rulings, the number issued, and the backlog of requests at the end of the year;

i. a projection of the number of staff-years allocated to the bonded warehouse audit/inspection program, the number of audits conducted, the number of shipments from warehouses inspected, and the total value of merchandise in bonded warehouses at year-end;

j. a forecast of passenger and non-commercial conveyance arrivals by air, land, and sea, and the volume of resources expressed in terms of personnel and dollars absorbed in processing passengers and non-commercial conveyances to enforce narcotics control, immigration, agriculture, and other laws;

k. the number and dollar value of the inventory of fines, penalties, and forfeiture cases at year end, and the amount carried as accounts receivable;

l. how the Customs Service would allocate additional increments of 400, 800, and 1,200 average positions above the current services budget level, together with a statement of attendant affects upon the information provided in (a) through (e) above, including changes in key performance indicators such as number of inspections, revenue collections, etc., and the anticipated impact on enforcement, service levels, and voluntary compliance with the customs laws.

Table 1.—COMPARISON OF PRESIDENT'S BUDGET FOR FY 1991 AND NTEU'S RECOMMENDED AUTHORIZATION FOR U.S. CUSTOMS SERVICE, FY 1991 AND FY 1992—SALARIES AND EXPENSES

[Dollars in thousands]

	FY 1991 President's budget		FY 1991 NTEU's recommendation		FY 1992 NTEU's additions [1]		FY 1992 NTEU's recommendations	
	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE
Inspection and control	145,801	2,292	163,174	2,568	+14,000	+200	177,174	2,768
Tactical interdiction	176,003	2,590	196,975	2,902	+7,000	+100	203,975	3,002
Investigations	160,129	1,588	179,210	1,780	+4,000	+50	183,210	1,830
Commercial operations	638,153	9,879	677,571	10,728	+39,000	+650	716,571	11,378
					* +54,762			
Total	1,120,086	16,349	1,216,930	17,978	+118,762	+1,000	1,335,692	18,978

[1] Additions shown are program increases for narcotics interdiction, trade law enforcement, and normal workload growth.

* This amount is the inflation addition to maintain service levels in FY 1992. It is computed as 4.5% of the FY 1991 recommended appropriation, based upon the Congressional Budget Office procedure contained in ***The Economic and Budget Outlook, FY 1991–1995,*** pp. 103–105.

Table 2.—NTEU'S RECOMMENDED ADDITIONS FOR U.S. CUSTOMS SERVICE, FY 1991 SALARIES AND EXPENSES

[Dollars in thousands]

	FY 1991 President's budget		NTEU addition to restore FY 1990 reductions [1]		NTEU addition to restore FY 1991 reductions [2]		NTEU addition for improved trade law enforcement and commercial services [3]		Total NTEU additions for FY 1991	
	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE
Inspection and control	145,801	2,292			+1,678	+37				
Tactical interdiction	176,003	2,590			+9,655	+187				
Investigations	160,129	1,588			+5,749	+113				
Commercial operations	638,153	9,879			+10,479	+299	+28,939	+550	+39,418	+849
Total	1,120,086	16,349	+40,344	+443	+27,561	+636	+28,939	+550	+96,844	+1,629

[1] NTEU's recommendation provides full funding in FY 1991 of program initiatives approved by Congress for FY 1990, i.e., 435 FTE for cargo container inspections, 149 ME for air program staffing, and 100 FTE for money laundering investigations. These initiatives, costing a total of $56.8 million and 684 FTE, were reduced by $40.3 million and 443 FTE by FY 1990 sequester and pay absorption.

[2] At OMB's direction, Customs' FY 1991 budget was reduced by $27.6 million and 636 FTE's for A-76 studies and to absorb pay and administratively uncontrollable overtime costs. These cuts result in loss of 300 FTE in commercial operations, and reduction of investigations agents to 600 below the FY 1989 level. NTEU's addition permits full funding of initiatives recommended by the Administration for FY 1991, including 175 FTE for Southwest Border Inspectors, 23 FTE for additional canine teams, and 23 FTE for ACS and internal controls, without reducing staff in other functions to pay for these activities.

[3] NTEU's recommendation would provide more Import Specialist liaison with the trade community, better enforce anti-dumping and countervailing duty laws, intellectual property rights, and the U.S.-Canada MA, strengthen cargo and warehouse inspection, and facilitate airline passenger processing.

Table 3.—U.S. CUSTOMS SERVICE, AVERAGE POSITIONS BY CATEGORY, FY 1972–1991

Fiscal year	Inspectors	Import specialists	Investigators/ patrol officers	Special agents	Total customs
1972	3,184	1,312	485	853	11,116
1973	3,472	1,304	736	956	11,772
1974	3,693	1,208	971	532	11,878
1975	3,803	1,262	1,152	582	13,076
1976	3,873	1,256	1,191	614	13,380
1977	3,943	1,204	1,365	603	13,228
1978	4,077	1,207	1,251	600	13,854
1979	4,174	1,236	1,211	577	14,061
1980	4,165	1,219	1,231	604	13,820
1981	4,379	1,165	1,332	597	13,316
1982	3,987	1,081			12,924
1983	4,122	1,027	1,134	701	12,898
1984	4,289	1,042	1,246	932	13,319
1985	4,262	974	1,236	925	13,042
1986	4,305	927	1,072	982	13,059
1987	4,386	966	923	1,166	13,971
1988	4,609	1,000	1,026	1,512	15,294
1989	5,059	1,094	991	1,808	16,706
1990	5,447	1,104	1,116	1,373	16,693
1991 (Admin)	5,524	1,084	1,011	1,211	16,379
1991 (NTEU)	5,861	1,404	1,347	1,808	17,978
1992 (NTEU)	6,411	1,704	1,447	1,858	18,978

Source: U.S. Customs Service Budgets.

Table 4.—CUSTOMS ALLOCATION OF NEW STAFF (FTE), FY 1986–FY 1989

	FY 1986	FY 1989	Change FY 86-89	Share of total increase (percent)
Total Customs	13,059	16,706	+3,647	100
Inspectors and I&C program support	5,151	5,879	+728	20
Import specialists, lab, and T&T program support	2,520	3,089	+569	15
Investigations agents and Inv. program support	1,274	2,117	+843	23

Table 4.—CUSTOMS ALLOCATION OF NEW STAFF (FTE), FY 1986–FY 1989—Continued

	FY 1986	FY 1989	Change FY 86–89	Share of total increase (percent)
Patrol officers, interdiction program support and intelligence	1,334	2,170	+836	23
Executive direction, general support, and internal affairs	2,226	2,766	+540	14
Part-time and temporary	514	685	+171	5

Source: U.S. Customs Budget Justification, FY 1988 and FY 1989, p. 40.

ALLOCATION BETWEEN COMMERCIAL OPERATIONS AND DRUG WAR

	FY 1986	FY 1989	Increase	Share (percent)
Commercial operations staff	8,765	10,416	+1,651	45
Drug war staff	4,294	6,290	+1,996	55

Table 5.—MERCHANDISE ENTRIES AND COMMERCIAL OPERATIONS POSITIONS, FY 1980–1992

Fiscal year	Formal entries	Commercial Operations Positions (FTE)	
		Total[1]	Tariff and trade[2]
1980	4,374,000	9,190	
1981	4,588,000	8,939	
1982	4,703,000	8,441	
1983	5,314,000	8,425	
1984	6,421,000	8,383	
1985	6,823,000	8,050	2,570
1986	7,251,000	8,765	2,520
1987	8,023,000	8,850	2,605
1988	9,046,000	9,527	2,731
1989	8,911,000	10,416	3,089
1990	9,361,000	10,158	2,998
1991 (Admin.)	9,723,000	9,879	2,890
1991 (NTEU)	9,723,000	10,728	3,440
1992 (NTEU)	10,162,000	11,378	3,740

Formal entries increased 114% from FY 1980–1990.
Commercial operations staff increased 10.5% from FY 1980–1990.
From FY 85-90, formal entries increased 37%; while tariff and trade staff increased 17%.

[1] Includes tariff and trade staff plus inspector and investigator positions for commercial operations.

[2] Includes line positions, i.e., import specialists, tariff and trade support, entry clerks, and laboratories. Excludes regional and national C&V staff.

Source: U.S. Customs Service.

Table 6.—ANTI-DUMPING AND COUNTERVAILING DUTIES, FY 1983–1989

Fiscal year	No. of AD/CVD entries	No. of antidumping entries	No. of countervailing duty entries	AD/CVD duties collected (thousands)	Percent of total duties collected
1983	84,965	24,522	60,443		
1984	97,220	42,679	54,541	37,100	.3
1985	114,604	31,156	83,448		
1986	88,346	33,674	54,672	95,811	.7
1987	137,483	57,901	79,582	103,643	.7
1988	123,381	62,807	60,574	143,138	.9
1989	204,280	128,579	75,701	245,463	1.5

Source: U.S. Customs Service.

Table 7.—TRADE PROGRAM AND DUTIABLE ENTRIES, COMPARED TO ENTRIES REVIEWED BY IMPORT SPECIALISTS, FY 1982–1989

Fiscal year	Total formal entries (thousands)	Dutiable entries (thousands)	Dutiable as percent of total	Trade program entries (thousands) [1]	Trade program as percent of total	By-pass rate [2]	Entries reviewed (not by-passed) (thousands)
1982	4,753	3,148	66.2	2,025	42.6	35	3,089
1983	5,314	3,565	67.1	2,185	41.1	50	2,657
1984	6,421	4,402	68.6	3,624	56.4	60	2,568
1985	6,823	4,743	69.5	3,697	54.2	62	2,593
1986	7,251	5,076	70.0	4,045	55.8	65	2,538
1987	8,023	5,445	67.9	4,458	55.6	[4] 60	3,209
1988	9,046	6,256	69.2	3,963	43.8	[4] 52	4,342
1989	8,911	5,943	66.7	4,499	50.5	[3] 49	4,545

[1] Trade program entries include quota and monitored, GSP, antidumping, countervailing duty, steel program, and other agency entries. Source of data is U.S. Customs Service.

[2] This is the percentage of entries that bypass Import Specialist review. Bypass procedures were established by Customs because entry growth exceeded staff capability.

[3] Testimony of the Commissioner before Ways and Means Committee, March 22, 1989.

[4] Estimated.

Table 8.—CUSTOMS CARGO PROCESSING, FY 1980–1989

	Number of cargo inspections [1]	Total number of general merchandise seizures	Number of containers entered (thousands)	Percent of containers inspected
1980	....	....	2,800	6.9
1981	....	....	3,100	7.0
1982	1,257,854	....	2,738	6.8
1983	1,337,099	36,972	2,949	3.8
1984	1,448,179	33,334	3,570	2.6
1985	1,506,106	32,679	3,356	2.8
1986	1,614,669	30,489	3,482	2.8
1987	1,659,991	40,257	3,632	....
1988	1,983,590	23,966	4,104	[2] 4.0
1989	([3])	22,343	3,793	....

[1] Estimated as 10 percent of the total number of releases of merchandise shipments from Customs' custody.

[2] Testimony of the Commissioner, March 22, 1989.

[3] In a special study conducted for the House Ways and Means Committee, covering the period January through December, 1988, 1.3 million inspections triggered by the Automated Commercial System (ACS) were conducted. The discrepancy rate for customs law violations was 3.6 percent.

Source: U.S. Customs Service.

Table 9.—PASSENGER PROCESSING PERCENT REFERRED TO SECONDARY,[1] FY 1983–1989

[In percent]

Fiscal year	Air	Land	Sea
1983	13.9	5.7	8.9
1985	13.5	6.8	9.1
1986	12.3	....	8.6
1987	11.1	9.4	4.8
1988	11.8	9.3	4.2
1989	11.0	10.0	3.5

[1] Referred to secondary means a passenger is designated for more intensive examination. All other passengers receive primary inspection and have their clearance facilitated.

Source: U.S. Customs Service.

COMMUNICATIONS

STATEMENT OF THE AMERICAN HORSE COUNCIL, INC.

The American Horse Council (AHC), which represents over 170 equine organizations in the U.S. with over 2 million members, appreciates the opportunity to submit this statement in opposition to any extension of the customs merchandise processing fee as it applies to horses. The customs fee has not only increased the cost to Americans to import horses for breeding, racing, showing or pleasure but it has also made more difficult and costly the customs procedure required to bring horses into the U.S. temporarily for these purposes. This has been detrimental to the American equine industry.

THE U.S. HORSE INDUSTRY

Horses are a very important and large part of the agricultural community in the U.S., comprising a $15.2 billion industry. This represents approximately 16% of the gross national product of the Agriculture, Forestry and Fisheries section of the U.S. economy.

According to the American Veterinary Medical Association's 1988 research study there are 6.6 million horses in the country. The Department of Interior reports that over 27 million people over age twelve ride each year, 54% on a regular basis. Horse owners spend approximately $13 billion annually to develop and maintain their animals.

Horse sports draw more than 110 million spectators each year. There are 7,000 sanctioned horse shows each year and thousands more local unsanctioned events. The horse-related spectator economy, which includes racing, horse showing and rodeo, adds $2.5 billion to the economy.

Because American bloodstock is the finest in the world, foreign purchases of American horses account for sales of approximately $200 million annually, ensuring a favorable balance of trade for the U.S. with respect to equines.

Moreover, foreigners regularly bring their horses into the U.S. temporarily for breeding, training, racing and showing. With these entries comes additional revenues to the American horse industry.

PERMANENT ENTRY AND THE MERCHANDISE PROCESSING FEE

Horses now enter the U.S. duty-free. The previous import tariff of 3% ad valorem, applicable to all horses valued at over $150, was eliminated in 1980 with the support of the AHC.

Between 1980 and 1986, when the Omnibus Budget Reconciliation Act authorized the U.S. Customs Service to assess the merchandise processing fee on goods brought into the country permanently, there was no fee imposed to bring horses into the country. The present fee, equal to .17% of the value of the horse, is in our view simply a way to raise revenue that is harmful to the American horse industry.

The reasons offered for the elimination of the import duty in 1980 are just as applicable to the elimination of the custom fee now. As did the former tariff, the present customs fee poses substantial problems for both the U.S. Customs Service and horse importers.

In imposing the fee on the permanent importation of horses, Customs Officers at ports of entry must make a determination of the value of horses imported. Since recognized experts can reasonably differ on the value of a particular horse, particularly younger untried horses, it is unreasonable to think that Customs Officers can reach a fair and uniform valuation. The same horse could be valued differently at different ports. For this reason the valuation of horses for fee purposes is inconsistent and ultimately unfair to the importer.

In addition, the customs fee increases the cost to Americans of bringing horses into the U.S. to improve our bloodstock. Since the foreign horses brought into this country to breed, race or show are generally the better animals their value is often high and the resulting customs fee, .17% ad valorem, is set high. This additional fee must be added to the already expensive process of importing horses, including the transportation costs, customs broker fees, veterinary fees and quarantine fees.

Finally, the AHC believes that horse owners and breeders may be paying more than their fair share of the expenses of the Customs Service recouped through the customs fee. Inasmuch as the customs paperwork involved in importing an expensive item does not seem appreciably more burdensome than an inexpensive item, and since most horses imported permanently are at the upper ranges, it would seem that horse owners are paying a greater share for similar services.

TEMPORARY ENTRY AND THE MERCHANDISE PROCESSING FEE

A substantial number of horses are also brought into the U.S. temporarily for breeding, horse races, shows, events, exhibits, trail rides or other competitions. They are also sent to the U.S. by foreigners for training. The customs fee does not apply to these horses brought into the U.S. temporarily, provided they are removed after their purpose has been accomplished. These horses enter duty-free and, technically at least, customs fee-free.

Still this fee adds an additional barrier to the importation of horses for racing, breeding, showing and training and has prompted a substantial number of complaints to the AHC regarding the additional cost and burden.

For example, many foreigners, particularly Canadians, bring their horses into the U.S. quite often to race, breed and compete. In the past, before the enactment of the customs fee, we have been advised that temporary imports were more easily accomplished. Foreign owners would be allowed into the U.S. for a temporary period without any bond. With the advent of the new customs fee, we understand the Customs Service has been imposing a bond on these horses imported temporarily to ensure they leave the country.

We have received complaints from owner/importers regarding the fee and the additional steps required to comply with its application. Many report they have been required to pay the fee even though they are exempt since they are importing their horses temporarily. Some complain they have been required to pay the fee several times for the same horse for different border crossings of the same horse since payment is assessed each time the horse enters. Others complain that they have had to contract with a customs broker to handle Customs Service paperwork related to temporary imports when previously they had been able to bring their horse into and out of the country without a broker.

In some cases, particularly with more valuable horses that are brought in through customs brokers, the cost of the bond required is higher than the customs fee would be for a permanent entry. This has prompted some horse owners to simply pay the customs fee and be done with the paperwork burden rather than post a bond.

All of this has led to a good deal of confusion and anger over what is perceived as an "unfair tax on foreigners." This is to the detriment of the American horse industry which has always benefited from open and easy access to our markets and services to foreign horses and owners.

CONCLUSION

The customs user fee has hurt the American horse industry. It has increased the cost to Americans importing horses and has added to the burden and cost of foreign owners and breeders in bringing their horses to the U.S. temporarily. This has resulted in the American industry losing potential revenues from breeding, racing, showing, exhibits and training.

The American Horse Council supports the elimination of the fee.

We appreciate the opportunity to submit this statement.

STATEMENT OF THE AMERICAN IRON AND STEEL INSTITUTE

The American Iron and Steel Institute (AISI), on behalf of its domestic member companies, has the following comments on the Customs Service's proposed FY 1991 budget and the Customs Service's merchandise processing fee.

AISI has a strong interest in the proper funding of Customs. The steel industry is a major user of the services of the Customs Service, importing raw materials such as iron ore and ferroalloys, and exporting steel mill products. For example, in 1989 the steel industry imported $522 million of iron ore, approximately $1 billion of ferroalloys and exported $2.8 billion of steel mill products. Therefore, an efficient Customs Service is vitally important to the U.S. steel industry's ability to produce for the U.S. and export markets.

The domestic steel industry also relies on the Customs Service to classify properly imported steel mill products, to collect correct import duties, and to enforce the trade laws. The classification of imported steel products keeps us informed about our markets (imports are significant, averaging about 20 percent of our market in recent years) and the charging of the correct import duty affects the competitiveness of our products in the U.S. steel market. Moreover, the full and effective enforcement of U.S. trade laws, including the President's Steel Liberalization Program, would be impossible were it not for the proper funding and staffing of the Customs Service. Customs has estimated that $14 billion in merchandise will enter the U.S. in FY 1990 in violation of our trade laws, causing serious damage to the U.S. economy. The danger, therefore, of an understaffed and underbudgeted Customs Service is obvious.

The demands put on Customs by the internationalization of the world economy have continued to increase dramatically in recent years. While this trend has continued, the total number of Customs employees declined from FY 1989 to 1990, (and would again in the proposed budget). Moreover, the number of import specialists, a critical job in Customs, has also declined. For example, under the proposed budget for FY 1991 the number of import specialists would be lower than in either FYs 1990, 1989, and even less than in the 1972-1981 period. However, the number of entries that the import specialists have handled increased from 4.4 million in 1981 to 9.7 million (Customs' estimate for FY 1991). Other demands on the import specialists have also increased—according to Customs the number of entries that included anti-dumping or countervailing duties increased from 137 thousand to 204 thousand from FY 1988 to FY 1989. AS international trade and the use of the unfair trade statutes increases (in 1992 the steel industry will have to rely on the unfair trade laws as the only recourse to the unfair trade practices of many foreign steel producers) the increase in workload for the Customs Service's import specialists will not slow.

AISI has had significant contact with Customs officials both in the field and at Headquarters over the years. We have been impressed by the dedication and level of professionalism of Customs employees. Customs officials have maintained their high standards in recent years when budgets have failed to keep up with increases in work loads. A major source of the problem of adequate funding for Customs has been the requirement that Customs absorb cost increases associated with salary and benefit cost increases, and Gramm-Rudman.

For a government agency that, on average, returns approximately $20 dollars to the Treasury for every dollar spent, we believe that it is bad public policy to cut back on services by eliminating positions when the volume of trade and other responsibilities of Customs is increasing.

Therefore, AISI views with great concern the budget request before the Committee. That proposal includes a reduction of 1,079 positions from the level that was authorized in FY 1990. Many of these eliminated positions would be from commercial operations. We believe that eliminating these positions would be a significant error which would jeopardize the ability of Customs to carry out its critical commercial enforcement duties.

As a minimum, therefore, we believe that the Committee should restore to Customs' budget the funds which would increase employment back to the authorized level contained in the current fiscal year. In addition, we urge the Committee to consider whether specific *increases*, such as in the import specialists ranks, are warranted given the increased workload that Customs is facing in commercial operations.

As noted above, the steel industry imports large quantities of raw materials. As a result, AISI's member companies pay a significant amount yearly in Customs user fees. *Nonetheless, the steel industry strongly supports the continuation of the merchandise processing fee.* We believe that in this period of serious budget deficits the user fee has had a positive impact on the ability of Customs to provide services to the payers of the fee. However, Customs has been collecting substantially more money through user fees than it has been able to spend for commercial operations in each year since the fee was established. Therefore, we believe that it is especially inappropriate to reduce the staff which are providing the services for which the user fee was collected. *The purpose of this user fee is to fund the Customs Service's commercial operations so that it can provide the services for which the users are paying.*

The purpose of the fee is not to provide money to general revenues for budget deficit reduction.

We, therefore, urge that the Committee adopt the Administrations' user fee proposal for merchandise processing—the ad valorem approach with a minimum and a mmum—with one amendment. We believe that it is imperative that in addition to the normal budgeting process, Customs should have access to the money collected over and above authorized and appropriated levels—in case the demands on the Service outstrip budgeted levels—and that user fee money should not be subject to sequestration. *Simply put, Customs should have access to the user fee money to provide services to the trading community which is paving for the services.*

In sum, we strongly urge the Committee to: (1) restore the cuts in the FY 1991 budget for Customs, with the original 1990 budget as the base, and give serious consideration to increases; (2) extend the user fee as proposed by the administration, but give Customs access to the funds over and above authorized and appropriated levels and; (3) preclude user fee monies from being sequestered. We believe that these suggestions will result in a more efficient Customs Service. With more efficient operations at ports of entry a beefed-up Customs Service would improve the efficiency and competitiveness of American industry. Furthermore, such a budget would enhance the ability of the Customs Service to detect and stop fraudulent importations.

STATEMENT OF THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute (API) is a trade association which represents over 200 companies involved in all aspects of the petroleum industry. As reflected in the fact hat petroleum imports make up the largest portion of U.S. imports, API and its members have extensive dealings with the U.S. Customs Service (Customs) on which they rely heavily for information and guidance. API has a direct interest in the efficiency and cost of Customs' operations.

Of the subjects of the Hearings, there are two items of particular concern to API members: (1) the drawback program under section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), an area of Customs administration in need of streamlining, and (2) the .17 percent ad valorem Customs user fee under 19 U.S.C. 58c(a)(10) that operates unfairly in case of bulk petroleum imports.

I. THE DRAWBACK PROGRAM

The Customs duty drawback program enables exporters to receive a refund for a portion of the Customs duties paid on imported materials if a product manufactured from these raw materials is exported. This encourages exports and makes domestic manufacturers more competitive in foreign markets. In June 1988, Customs issued a ruling, C.S.D. 88-1, which greatly restricts the ability of exporters to file for drawbacks.

Petroleum products are manufactured in a continuous process where both duty paid and domestic raw materials may be consumed together in a single, continuous, steady production stream. Furthermore, the nature of storage and transportation facilities results in commingling of identical products from different suppliers. The drawback statute itself, Section 313 of the Tariff Act of 1930, does not stipulate any particular method of identifying commingled materials. The procedures are a matter of administrative discretion by Customs.

In issuing C.S.D. 88-1, Customs used its administrative discretion to retroactively "reinterpret" the procedures upon which industry has been basing its decisions in exporting products and filing drawback claims for commingled material. In fact prior to C.S.D. 88-1, drawback claims based on, and supported by, the industry's monthly accounting procedures had been *accepted,* audited, and paid by Customs.

The procedures outlined in C.S.D. 88-1 reduce or eliminate the industry's ability to file drawback claims for fungible (commercially interchangeable) products, exported from commingled storage facilities. At such storage locations, including airport facilities, more than one company will have fungible products in common storage.

In particular, at most airports, jet fuel is handled through common storage facilities, pipeline systems, and fueling facilities. In most cases, the refueling is handled by fueling service companies. The service companies maintain inventory accounting records, for each supplier or airline owning jet fuel, on a monthly and total airport facility basis. It is not feasible for refiners to maintain separate inventory accounting records for drawback-eligible product on a tank by tank basis without substantial changes in operations of U.S. airport facilities and significant added costs. The added costs would outweigh the drawback refunds in most cases.

The requirements of C.S.D. 88-1—to account for inventory on a daily and tank by tank basis—impose an excessive administrative burden, if not an impossible procedure. Exporters will not be able to file drawback claims for direct exports from commingled storage. This could effectively eliminate the drawback option for jet fuel sold for use in international commerce at most major international airports nationwide, or for bunker fuel supplied to ships engaged in foreign commerce.

Promoting the duty drawback program will have a favorable impact on foreign trade and the country's balance of payments. In recent years, sales of foreign refined bonded jet fuel (not subject to import duty) have increased dramatically. Available information indicates there are more than 1,000 daily foreign departures from the United States. Based on an average refueling of 18,000 gallons (about 430 barrels) before departure, these flights use jet fuel valued at approximately $8 million each day. Each barrel of exported domestically produced jet fuel that replaces a barrel of imported bonded jet fuel will help reduce the U.S. foreign trade deficit.

API urges strongly the return to a monthly inventory accounting per location to eliminate the unmanageable paper burden of C.S.D. 88-1. If necessary to appease concerns of an overdraw, API proposed to Customs an accounting pool concept for commingled storage situations; industry would forego drawback claims for a month to establish a pool of drawback eligible product at each storage area. This would ensure Customs that any product exported during the subsequent month qualifies for drawback.

II. THE AD VALOREM CUSTOMS USER FEE

API opposes the current 0.17 percent ad valorem Customs user fee, imposed on imported goods under 19 U.S.C. section 58c(a)(10), because the amount of the fee is far in excess of the cost of regulatory enforcement and service involved in the inspection and witnessing of the normal industry size cargoes of imported crude oil and petroleum products.

API continues to support the concept of Federal user fees for beneficial and efficiently managed Federal services; however, the user fee should be commensurate with the cost or value of the services rendered. In the case of bulk petroleum imports the current Customs user fee is many times the cost of the service and, as such, is subsidizing other sectors of the inspection function of Customs.

Consider that typical size crude cargoes, ranging from 350,000 barrels to 1,000,000 barrels, at their current crude costs result in a Customs user fee of from $12,000 to $34,000 per vessel. On the average, the time required by a customs official for witnessing and inspecting a bulk petroleum cargo is about four hours, in exceptional cases certainly no more than eight hours. Thus, the 0.17 percent ad valorem fee is not only grossly inequitable to the importer or purchaser of the crude oil, it has also raised objections from other oil producing nations as a perceived violation of the General Agreement on Tariffs and Trade (see Committee on Finance, New Release of 1-30).

Although imported cargoes of finished products tend to be smaller than crude oil cargoes, the value is higher and the same relative user fee inequity exists.

Since the ad valorem basis for setting the Customs inspection costs of a bulk petroleum cargo is grossly inequitable in apportioning the overall costs of recovering Customs inspection costs it is recommended that it be replaced by a flat Customs inspection fee. The $575 fee proposed as a maximum in H.R. 3150 of August 4, 1989, would appear to be a suitable flat fee for the Customs inspection of each bulk cargo of imported crude oil or petroleum product(s).

For additional information, please contact Ed Beck at 682-8418.

LOS ANGELES AREA CHAMBER OF COMMERCE,

March 14, 1990.

Hon. LLOYD BENTSEN,
Chairman, Senate Committee on Finance,
Room SD-205 Dirksen Senate Office Building,
Washington, DC.

Re: Objection to Extension of Customs User Fees

Dear Senator Bentsen: In response to Finance Committee Press Release H-6 of January 30, 1990, requesting written comments on the Customs User Fee, we are writing on behalf of our membership to urge that the Customs User Fee should not be extended beyond the sunset day of September 30, 1990, for the reason provided hereinafter.

For over three years, our importing members have been forced to pay so-called user fees on the value of every importation and entry, in addition to the usual customs duties assessed on the imported articles. Customs has collected this fee, first at .22% and for the last year and this year at 0.17%, without regard to the actual costs of processing an entry. Thus, although Customs may expend the same amount of time and resources to process an entry valued at $1 million and one valued at $1,000, the former entry will pay $17,000 in user fees, a substantially higher merchandise processing fee than the entry valued at $1,000, on which user fees of only $17 would be payable. Since the amount of the fee is unrelated to the actual cost of processing an entry, the assessment of user fees constitutes an unfair charge on imports, inconsistent with GATT principles.

Although the proposed extension of the user fee, included in the Mini-Trade Bill recently reported by the Senate Committee on Finance, includes a cap of the fee on both manual and automated entries, it still remains an ad valorem fee which bears little relation to the cost of processing an entry. In fact, the GAO, in attempting to determine the costs of processing, has indicated that Customs had not acquired any data from which it could even attempt to estimate its costs of processing Customs entries.

Continuation of the GATT-illegal user fee could invite retaliation against U.S. products and further disadvantage the competitiveness of our member firms. Extension of the user fees by the United States will only encourage other countries to similarly impose user fees on U.S. exports entering these countries, to the disadvantage of American goods in the international marketplace.

The fact that none of the funds collected as user fees have been applied towards defraying the costs of Customs' commercial operations, confirms that the added fee is actually an import tax or duty rather than a user fee. The fee has not been used in the past to fund Customs operations and it is doubtful that the fees collected will be used to enhance Customs commercial activities in the future. Rather, the fee is used only to enhance the Government's revenue at great cost to U.S. business.

The costs to our members of paying the Customs User Fee directly reduce company profits and otherwise disadvantage their products in the marketplace. Moreover, the cost to the U.S. Government of collecting and processing the fee, recordkeeping, and the time spent in manhours defending the fee through international negotiations, Congressional hearings and business lobbying exceeds the revenue raised. The fact that the user fee is a normal business expense and is tax deductible from profits subject to income tax certainly reduces the fee's revenue raising capabilities.

Customs is our Government's second largest revenue producing agency. Its functions are performed for the benefit of everyone in the United States. Our member firms are obligated to submit to Customs' requirements. They derive no special benefit from the agency's operations. Importers are not "users" of the Customs Service any more than taxpayers are "users" of the Internal Revenue Service.

Continuance of the fee in any form is bad fiscal policy and bad trade policy at a crucial time in the Uruguay Round negotiations. Accordingly, we urge that the Customs User Fee not be extended, and that the fee be allowed to expire on September 30, 1990.

Very truly yours,

RAY REMY, *President.*

BEDROS ODIAN,
Buffalo, NY, February 7, 1990.

MS. LAURA WILCOX,
Hearing Administrator,
U.S. Senate,
Washington, DC.

MR. ED MIHALSKI,
Minority Chief of Staff,
U.S. Senate,
Committee on Finance,
Washington, DC.

Re: Hearing on Customs Service Budget Authorization and Customs User Fee
Customs User Fee: Merchandise Processing Fee (MPF).

Dear Ms. Wilcox and Mr. Mihalski: I recommend the following:

A flat $1.00 merchandise processing fee on all *formal* consumption entries (Shipments of merchandise exceeding $1,250 in value).

A flat $0.50 merchandise processing fee on all *informal* consumption entries (Shipments of merchandise generally not exceeding $1,250. Certain merchandise is limited to $250 in value for informal entries).

The present ad valorem user fee (0.17 percent) is really a tariff. For example, a shipment of merchandise which is *duty-free* and whose value is $100,000 is subject to a user fee (MPF) of $170.

The purpose of a user fee is the recovery of the cost of processing, not the accumulation of a cash surplus. Indeed, the ad valorem fee violates the General Agreement on Tariffs and Trade.

A careful projection of the above flat $1.00 and $0.50 fees will establish that they are adequate to defray customs entry processing costs.

I urge the Committee to repeal the ad valorem fee and to enact the above $1.00 and $0.50 flat fees.

Wishing you every success in your endeavors, I remain

Yours respectfully,

BEDROS ODIAN.

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